APPENDIX

Vol. III (pp. 788-1155)

DEC 3 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-130

UNITED STATES OF AMERICA,
Petitioner,

—v.—

SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL.,
Respondents.

No. 70-187

PATTIE BLACK COTTON, ET AL.,
Petitioners.

—v.—

SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT ON APPEALS FOR THE FOURTH CIRCUIT

PETITIONS FOR WRITS OF CERTIORARI FILED APRIL 22, 1971 AND MAY 20, 1971
CERTIORARI GRANTED OCTOBER 12, 1971

IN THE

Supreme Court of the United States

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[Caption Omitted]

ORDER

LARKINS, District Judge:

This cause coming on to be heard before the Court on a motion for a preliminary injunction filed by the plaintiff pursuant to the provisions of Sections 407(a) and (b) of the Civil Rights Act of 1964, as codified, 42 U.S.C.A. §§ 2000c-6(a) and (b) seeking to restrain the defendants from giving any force or effect to the provisions of Chapter 31 of the North Carolina Session Laws of 1969, an Act to establish a separate administrative unit for the operation of the public schools of the Town of Scotland Neck, North Carolina; and due notice having been given to the defendants; and the Court having considered the evidence and the argument of counsel and being fully advised in the premises; and it appearing to the Court that effectuation of the terms of the Act will result in the operation of the schools of Scotland Neck, North Carolina, and Halifax County, North Carolina, on a racially discriminatory basis to the irreparable damage of the United States and the Negro pupils of Halifax County; and it further appearing to the Court that no injunctive relief as to effectuation of the provisions of Chapter 31 is being sought against the defendant Halifax County Board of Education; and that the defendants Ferd L. Harrison, as Mayor of the Town of Scotland Neck, J. A. Andrews, F. G. Shearin, J. I. Walston, D. E. Josey, Jr., as members of the Board of Commissioners of the Town of Scotland Neck, and the Town of Scotland Neck, a body corporate, are not proper parties to this action;

It is, therefore, ORDERED, ADJUDGED and DECREED:

THAT the motion to dismiss filed on behalf of the defendants Ferd L. Harrison, as Mayor of the Town of Scotland Neck, J. A. Andrews, F. G. Shearin, J. I. Walston, D. E. Josey, Jr., as members of the Board of Com-

missioners of the Town of Scotland Neck, and the Town of Scotland Neck, a body corporate, be, and the same hereby is allowed; and

THAT the defendant Scotland Neck City Board of Education and its officers, agents, employees and successors are hereby enjoined from giving any force or effect to the provisions of Chapter 31 and from taking any action pursuant to the provisions of Chapter 31 pending a final determination on the merits of the issues raised in the present action; and

THAT pursuant to the provisions of Rule 65(c) of the Federal Rules of Civil Procedure, no security shall be required of the plaintiff, United States of America; and

THAT this ORDER shall become effective as of 12:00 Noon on Monday, August 25, 1969; and

THAT a Memorandum Opinion subsequently will be filed in this action; and

THAT the Clerk shall serve copies of this ORDER upon all counsel of record, and the defendants.

Let this ORDER be entered forthwith.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

/s/ Algernon L. Butler
ALGERNON L. BUTLER
United States District Judge

Raleigh, North Carolina
August 25, 1969

[Caption Omitted]

MEMORANDUM OPINION

EARKINS, District Judge:

This Court entered its ORDER on August 25, 1969, effective at 12:00 noon. The Clerk served copies of said ORDER upon all defendants and counsel of record.

Pursuant to said ORDER this MEMORANDUM OPINION is filed in support of said ORDER and is included therein by reference.

This cause coming on to be heard before the United States District Judges for the Eastern District of North Carolina, and being heard upon the motions of plaintiffs and additional plaintiffs for a preliminary injunction and for a declaratory judgment; and due notice having been given to all defendants; and the Court having considered the evidence, the stipulations, the briefs and arguments of counsel, and being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. On March 3, 1969, the General Assembly of North Carolina ratified a measure designated Chapter 31, Session Laws of North Carolina 1969, creating the Scotland Neck City Administrative Unit in Halifax County to operate the public schools in said unit; providing that all public school property located within the unit should become the property of the unit; providing for a supplemental tax levy, and directing a special election to authorize the establishment of said unit and the levying of said tax. The voters approved said proposals.

2. The Board of Education of the Scotland Neck City unit permits transfers of students in and out of said units. Scotland Neck City has established a tuition charge of $100.00 a year for the first child in a family, $25.00 for the second child, $25.00 for the third child, and each subsequent child per family free, for all students transferring into said unit.

3. During the school year 1968-69, all the public schools of Halifax County were operated by the Halifax

County Board of Education. There was a total of 10,655 students. The racial composition of the county school system was approximately as follows: White, 2,357 (22%); Negro, 8,196 (78%), and Indian, 102.

4. The Scotland Neck City unit has approximately 695 *resident* students: White, 399 (57.4%); Negro, 296 (42.6%). The school facilities within the unit will accommodate approximately 1,000 students. Since the creation of the City unit under the 1969 Act, 350 Whites, and 10 Negroes have transferred from the county schools into the City unit; 44 Negroes in the eleventh and twelfth grades have transferred from the city to the Brawley High School in the county system. The net effect on the City unit for the school year 1969-70 is as follows: White, 759 (74%); Negro, 262 (26%).

5. The racial composition of the county school system as a result of the creation of the administrative unit, and taking into consideration the net effect of the transfers in and out of the systems, is as follows: White, 1,598 (17%); Negroes, 8,186 (83%); Indian, 102.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and of the subject matter of this proceeding.

2. Without determining the constitutionality of Chapter 31 of the 1969 Session Laws of North Carolina, the Act in its application creates a refuge for white students, and promotes segregated schools in Halifax County.

3. The Act impedes and defeats the Halifax County Board of Education from implementing its plan to completely desegregate all of the public schools in Halifax County by the opening of the school year 1969-70.

4. Unless the defendants are enjoined, the plaintiffs will suffer immediate and irreparable injury by the deprivation of their constitutional rights.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

Raleigh, North Carolina
August 25, 1969

[Caption Omitted]

AMENDED ANSWER

The defendant, The Scotland Neck City Board of Education, a body corporate, answering the Amended Complaint, alleges and says:

1. That as to the allegations contained in Paragraph 1, Claim One, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

2. That the allegations contained in Paragraph 2 of Claim One are admitted.

3. That as to the allegations contained in Paragraph 3, Claim One, it is admitted that the defendant Halifax County Board of Education (hereinafter the Halifax County Board) is a body corporate, organized and existing under the laws of the State of North Carolina, and it has a duty under North Carolina law to operate a public school system in Halifax County, North Carolina other than in the Town of Scotland Neck.

4. That the allegations contained in paragraph 4 of Claim One are admitted.

5. That the allegations contained in Paragraph 5 of Claim One are admitted.

6. That the allegations contained in Paragraph 6 of Claim One are admitted.

7. That as to the allegations contained in Paragraph 7, Claim One, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

8. That the allegations contained in Paragraph 8 of Claim One are admitted.

9. That the allegations contained in Paragraph 9 of Claim One are admitted.

10. That the allegations contained in Paragraph 10 of Claim One are admitted.

11. That the allegations contained in Paragraph 11 of Claim One are admitted.

12. That as to the allegations contained in Paragraph 12 of Claim One it is admitted that the Scotland Neck

Board has hired a Superintendent of Schools and is prepared to open its schools for students on August 28, 1969, and it is further admitted that the vast majority of the students who will attend the schools of the Scotland Neck City Administrative Unit during the 1969-70 school year attended schools operated by the Halifax County Board during the previous year; all other allegations contained in Paragraph 12 are denied.

13. The allegations and averments contained in Paragraph 13, Claim One are denied.

14. The allegations and averments contained in Paragraph 14, Claim One are denied.

15. The allegations and averments contained in Paragraph 15, Claim One are denied.

16. It is admitted that unless restrained by order of the Court this answering defendant will continue to give full force and effect to the provisions of Chapter 31; all other allegations contained in Paragraph 16 are denied.

17. That as to the allegations contained in Paragraph 17 of Claim Two, which realleges Paragraphs 1, 2, 3, 7 and 8 of the Claim One, this defendant answers said paragraph in the same manner as above.

18. That as to the allegations contained in Paragraph 18, Claim Two, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

19. That as to the allegations contained in Paragraph 19, Claim Two, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

20. That as to the allegations contained in Paragraph 20, Claim Two, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

21. The allegations and averments contained in Paragraph 21, Claim Two are denied.

22. The allegations and averments contained in Paragraph 22, Claim Two are denied.

FIRST FURTHER ANSWER

For a First Further Answer to the Plaintiff's amended complaint this Defendant alleges and says:

1. The Statute (North Carolina Session Laws 1969, Chapter 31) hereafter called the "Statute," the constitutionality of which is here challenged by the Plaintiff, followed a long established North Carolina legislative precedent and pattern of the formation of a special administrative school unit within a county consisting usually of a municipality. There are in North Carolina, exclusive of Scotland Neck, fifty-two special municipal administrative school units.

2. The Statute created a special school administrative unit; the boundaries of which were designated as the municipal boundaries of the Town of Scotland Neck. Within the geographic boundaries of the Town of Scotland Neck there now reside approximately 751 students of school age; 56.86 percent of which are white and 43.14 percent of which are negro. Classroom facilities within the town limits can accommodate approximately 812 students; 784 of which are accommodated by permanent facilities and 28 of which are accommodated by a mobile classroom.

3. The Statute provides, as conditions precedent to the formation of the unit, a vote of the people in Scotland Neck approving both the formation of the unit and the imposition of a school tax of 50 cents on the dollar of taxable property valuation in the town.

4. By election held pursuant to the Statute, the people of Scotland Neck approved both the formation and the imposition of the special school tax.

5. The resident school population is sufficient to constitute an efficient separate school administrative unit, and the special tax funds will enable the Defendant to offer to its resident students an educational system which is greatly superior to that heretofore enjoyed by them and superior to that which would be available to them if there were no such tax. Defendant made ar-

rangements to operate such an improved school system in Scotland Neck for the school year 1969-1970.

6. On August 25, 1969 there was issued a temporary injunction in this cause, preventing Defendant from taking any further steps in connection with the operation of a school unit until the final determination of the merits of this cause.

7. The single issue in this case is the constitutionality of the Statute. The issue is not the propriety or the legality of whatever might, from time to time, be the plan or plans of operation under the Statute.

8. It is the present intention of this Defendant, and this Defendant makes this continuing representation, that, if and when there is removed the temporary injunction barrier preventing operation under the Statute, Defendant will confine its student body to those students residing within the geographical limits of the town of Scotland Neck, plus or minus such student transfers as may be in conformity to the law and/or Court order or orders applicable to Defendant, and in conformity to a plan of limitation of transfers to be prepared by Defendant and submitted to this Court.

WHEREFORE, this Defendant respectfully prays that:

1. The Court declare to be constitutional Chapter 31 of the 1969 Session Laws of North Carolina;

2. The Court dissolve the temporary injunction heretofore issued in this cause on the 25th day of August, 1969;

3. The Court retain jurisdiction of this cause for the receipt of a plan of transfer to be submitted by the Defendant to the Court and for the hearing of any objection that may be filed thereto.

C. KITCHIN JOSEY

/s/ William T. Joyner
WILLIAM T. JOYNER

/s/ Walton K. Joyner
WALTON K. JOYNER
Attorneys for the defendant, Scotland Neck City Board of Education, a body corporate

[Caption Omitted]

MOTION

Now comes the defendant, the Scotland Neck City Board of Education, a body corporate, by and through its attorney, C. Kitchin Josey, and respectfully shows unto the Court:

1.

That at 12 o'clock noon on the 25th day of August, 1969, an order was entered in this cause enjoining this defendant "from taking any action pursuant to the provisions of Chapter 31 (of the 1969 Session Laws of North Carolina) pending a final determination on the merits of the issues raised in the present action."

2.

That prior to the entering of the above mentioned order this defendant in its official capacity and in accordance with the laws of the State of North Carolina under its then policy accepted students that lived outside the school administrative unit boundaries on a tuition basis receiving approximately $11,656.53 from the parents of such tuition students. Of this amount, $2,970.66 was expended by this defendant for obligations incurred prior to the entering of the above mentioned order.

3.

That the defendant, the Scotland Neck City Board of Education, desires to repay in full the parents of the students who have previously paid in these tuition funds.

4.

That the Scotland Neck City Board of Education has heretofore incurred certain legal expenses in connection with the defense of this cause and the said defendant expects to incur certain additional expenses until this matter is finally determined.

5.

That this defendant has been offered certain private donations from citizens in this area and particularly the citizens of the Town of Scotland Neck for the purpose of repaying the parents of the tuition students and for the purpose of defraying expense of defending this law suit.

WHEREFORE, this defendant prays the Court that an order be entered modifying the temporary injunction order of August 25, 1969, to the effect that the defendant, the Scotland Neck City Board of Education, be allowed to receive donations from private sources and to use such funds, together with the tuition funds now in its hands, for the repayment of the amounts heretofore paid by parents of tuition students, and further that said Board be permitted to use said privately donated funds for the purpose of legal expenses and fees incurred and to be incurred until this matter is finally determined.

This the 12th day of September, 1969.

/s/ C. Kitchin Josey
C. KITCHIN JOSEY, William T. Joyner and Walton K. Joyner, Attorneys for the Scotland Neck City Board of Education

[Caption Omitted]

ORDER

This cause coming on to be heard on a Motion by the defendant, the Scotland Neck City Board of Education, a body corporate, for a modification of the order of preliminary injunction heretofore entered by this Court at 12 o'clock noon on August 25, 1969, to the effect that certain funds now in said defendant's hands and certain private donations be authorized for use by said defendant to repay certain parents of tuition students and for authority to use said privately donated funds for the purpose of defraying legal expenses in connection with the defense of this cause;

And it appearing to the Court that the requested modification of said temporary injunction is proper and said Motion should be allowed;

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant, the Scotland Neck City Board of Education, be allowed to receive donations from private sources and to use such funds, together with the tuition funds now in its hands, for the repayment of the amounts heretofore paid by parents of tuition students, and further that said Board be permitted to use said privately donated funds for the purpose of legal expenses and fees incurred and to be incurred until this matter is finally determined.

IT IS FURTHER ORDERED that the Clerk shall serve copies of this Order upon all counsel of record.

Let this Order be entered forthwith.

/s/ Algernon L. Butler
CHIEF UNITED STATES
DISTRICT JUDGE

/s/ John D. Larkins, Jr.
UNITED STATES
DISTRICT JUDGE

[Caption Omitted]

MOTION OF ROBERT MORGAN, ATTORNEY GENERAL OF NORTH CAROLINA, TO INTERVENE IN THIS ACTION IN BEHALF OF THE STATE OF NORTH CAROLINA, AS PARTY DEFENDANT.

Robert Morgan, Attorney General of North Carolina, in behalf of the State of North Carolina, hereby moves the Court for leave to intervene in this action in order to assert the defenses of the State of North Carolina, as set forth in the proposed Answer of which a copy is hereto attached, on the grounds and for the reasons, as follows:

1. That Applicant, Robert Morgan, is the duly elected and qualified Attorney General of the State of North Carolina, and makes this application to intervene in this action in behalf of said State of North Carolina; that North Carolina is one of the States that compose the United States of America and exercises such powers and duties as set forth in its Constitution and Laws enacted by its General Assembly and in accordance with the Constitution of the United States.

2. That this motion to intervene in this action by the Attorney General of North Carolina is made in behalf of said State of North Carolina (hereinafter referred to as: Applicant) pursuant to the Federal Rules of Civil Procedure, the same being Rule 24; that this application is made as a matter of right in that the constitutionality of one of the acts or statutes of said State is involved in said action; that applicant may be bound by any judgment entered by the Court in this action, and applicant is entitled to adequate representation on the question of the constitutionality of said State act or statute; that applicant is also entitled to intervene in this action in the discretion of the Court and as a permissive intervention in that the plaintiff relies upon the allegation of the unconstitutionality of an act or statute of this State as a part of its claim; that there is a common question of law and fact as the constitutionality of said State law or

act is drawn into question and if said intervention is allowed, as herein requested, the same will not unduly delay or prejudice the adjudication of the rights of the parties.

3. That the act of the General Assembly drawn in question as to its constitutionality in this action is Chapter 31 of the Session Laws of 1969, which became effective on the 3rd day of March, 1969; that a copy of said act is attached to the amended complaint of the United States of America and is hereby referred to as a part of this motion; that the plaintiff alleges that said act and its implementation is in violation of the Fourteenth Amendment to the Constitution of the United States and this is denied by the applicant; that applicant, if allowed to intervene in this action, will allege and assert that said act is valid and that its result is to establish a city board of education similar to many other city boards of education throughout the State of North Carolina and which have been established for many years; that if said act is held by the Court to be invalid and unconstitutional the status and establishment of all other boards of education, both city and county, will be put in jeopardy.

4. That applicant accepts the status of this action as heretofore developed but reserves the right to except to any evidence orders, rulings or proceedings that may be made or entered, or heretofore made and entered, contrary to the constitutional validity of said act or statute, and the right to argue in support of the validity of said act or statute; that applicant agrees to be bound by the temporary injunction heretofore entered in this cause but reserves the right to move that same be vacated by the Court.

5. That annexed hereto, in accordance with Rule 24 (c) of the Federal Rules of Civil Procedure is a proposed pleading entitled: "Answer of Robert Morgan, Attorney General of North Carolina, in behalf of the State of North Carolina, in Intervention." The applicant moves the Court that said pleading be deemed the appearance of applicant in support of the constitutionality of the act of the General Assembly of North Carolina, and in opposition to all pleadings and motions of the parties

hereto that have been or may be made herein insofar as said pleadings and motions are based on the contention that said act of the General Assembly of North Carolina is in any respect, or in any application, unconstitutional.

WHEREFORE: Applicant prays the Court that an order be entered herein allowing applicant to intervene in this action as a party defendant and that his proposed answer be filed as a pleading in this action; that this motion be brought on before the Court for hearing on October 24, 1969, at the Federal Courtroom in Raleigh, North Carolina, or at such other time as may be convenient and as ordered by the Court.

/s/ Robert Morgan
Attorney General of
North Carolina

/s/ Ralph Moody
Deputy Attorney General of
North Carolina
P. O. Box 629
Justice Building
Raleigh, North Carolina 27602

[Caption Omitted]

ORDER ALLOWING INTERVENTION OF ROBERT MORGAN, ATTORNEY GENERAL OF NORTH CAROLINA, IN BEHALF OF THE STATE OF NORTH CAROLINA.

This cause coming on to be heard upon the Motion of the Attorney General of North Carolina that he be allowed to intervene in this action as an Intervenor-Defendant in behalf of the State of North Carolina; and

It appearing to the Court that there is involved in this action a question as to the validity and constitutionality of an Act of the General Assembly of North Carolina; that this is a question of public interest throughout the State and involves the right of the State to create a public school administrative unit; that it is a legal possibility that the State of North Carolina may be bound by the judgment entered by the Court between the parties plaintiff and defendants as this action now stands; that there is a common question as to the validity of a similar statute involved in the Warren County case which is consolidated with this case; that the defendants in this action rely upon the validity of Chapter 31 of the Session Laws of 1969, enacted by the General Assembly of North Carolina:

IT IS, THEREFORE, ORDERED AND ADJUDGED BY THE COURT: That as a matter of right, or in the alternative, in the discretion of the Court, as a permissive right, the Attorney General of North Carolina, in behalf of the State of North Carolina, be, and he is hereby allowed, to intervene in this action as a party intervenor-Defendant, and that he be allowed to file his Answer which is attached to the Motion herein filed.

IT IS FURTHER ORDERED BY THE COURT: That said Intervenor-Defendant shall accept the status of this action as it now stands and shall be bound by the Temporary Restraining Order heretofore entered in this cause with the right to adopt the objections, exceptions and motions in this cause that have heretofore been en-

tered by the other defendants and to support the validity of Chapter 31 of the Session Laws of 1969, as enacted by the General Assembly of North Carolina.

IT IS FURTHER ORDERED BY THE COURT: That the Plaintiff be allowed to file such responsive pleading to the Answer of the Intervenor-Defendant as it shall deem to be advisable.

This the 31 day of October, 1969.

/s/ Algernon L. Butler
Chief Judge of the District Court of the United States for the Eastern District of North Carolina

/s/ John D. Larkins, Jr.
Judge of the District Court of the United States for the Eastern District of North Carolina

A True Copy, Teste:
SAMUEL A. HOWARD
Clerk

By /s/ [Illegible]
Deputy Clerk

[Caption Omitted]

ANSWER OF ROBERT MORGAN, ATTORNEY GENERAL OF NORTH CAROLINA, IN BEHALF OF THE STATE OF NORTH CAROLINA—INTERVENOR-DEFENDANT.

The Intervenor-Defendant, Robert Morgan, Attorney General of North Carolina, in behalf of the State of North Carolina, answering the original and amended complaints, filed herein, alleges:

ORIGINAL COMPLAINT

1. The Intervenor-Defendant has not knowledge or information sufficient to form a belief as to the truth of Paragraph 1 of the original complaint, and, therefore, denies the same.

2. The allegations of Paragraph 2 of the original complaint are denied.

3. The allegations of Paragraph 3 of the original complaint are admitted.

4. The allegations of Paragraph 4 of the original complaint are admitted.

5. The allegations of Paragraph 5 of the original complaint are admitted.

6. That the Intervenor-Defendant is not concerned with the matters alleged in Paragraph 6 of the original answer and neither admits or denies the same.

7. The Intervenor-Defendant is not concerned with the matters alleged in Paragraph 7 and is not required to answer same.

8. The Intervenor-Defendant is not concerned with the matters alleged in Paragraph 8 and is not required to answer same.

9. The allegations of Paragraph 9 of the original complaint are admitted.

10. The Intervenor-Defendant has not knowledge or information sufficient to form a belief as to the truth of Paragraph 10 of the original complaint, and, therefore, denies the same.

11. The allegations of Paragraph 11 are admitted.

12. The Intervenor-Defendant for lack of knowledge or information to form a belief as to the truth of Paragraph 12 of the original complaint denies the same.

13. The allegations of Paragraph 13 are denied.

14. The allegations of Paragraph 14 are denied.

15. The allegations of Paragraph 15 are denied.

CLAIM TWO

16. That Paragraphs 1, 2, 3, 6 and 8 of this Answer are re-alleged as Answers to this Claim and incorporated herein by reference as if fully set forth and alleged herein.

17. For lack of knowledge or information sufficient to form a belief as to the truth of allegations 17, they are denied.

18. The Intervenor-Defendant alleges that he is not required to answer Paragraph 18 of the original complaint since they are concerned with matters of administration.

19. Answering the allegations of Paragraph 19 of the original complaint the Intervenor-Defendant alleges that neither the State, the State Board of Education, or the State Superintendent of Public Instruction has any legal authority to fix attendance areas, assign pupils to the various facilities of the public school system, or to adopt or implement plans of desegregation; and except as here alleged said paragraph is denied.

20. On information and belief, said paragraph is denied.

21. The allegations of Paragraph 21 are denied.

AMENDED COMPLAINT

1. Answering Paragraph 1 of the amended complaint, it is admitted that the Attorney General of the United States attached to the original complaint his certification as therein shown; that it is a condition precedent to the bringing of this action that there shall be secret complaints made to the Attorney General of the United States; that any action based upon secret complaints is

void, invalid and unconstitutional and a violation of the due process clause and the equal protection of the law clause of the Fourteenth Amendment of the Constitution of the United States; that the provisions of 42 USC 2000c-6(a) and (b) are unconstitutional and void in that said provisions purport to confer jurisdiction upon Federal Courts to entertain actions based upon secret complaints, discriminate in favor of one ethnic group as against another ethnic group by furnishing government attorneys to one group as against another group, furnish costs and expenses in favor of one group as against another group, and thus create an invidious discrimination in favor of one group of citizens as against another group of citizens in violation of the Fourteenth Amendment of the Constitution of the United States; and except as herein alleged said paragraph 1 of amended complaint is untrue and is denied.

2. The allegations of Paragraph 2 of the amended complaint are untrue and are denied.

3. The allegations of Paragraph 3 are admitted.

4. The allegations of Paragraph 4 are admitted except it is denied that such action should lawfully be maintained.

5. The allegations of Paragraph 5 are admitted.

6. The allegations of Paragraph 6 are admitted.

7. That the Intervenor-Defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7, and, therefore, denies the same.

8. The allegations of Paragraph 8 are denied for lack of knowledge or information sufficient to form a belief as to the truth of same.

9. The allegations of Paragraph 9 are admitted.

10. The allegations of Paragraph 10 are admitted.

11. The allegations of Paragraph 11 are admitted.

12. Answering the allegations of Paragraph 12 on information and belief, Intervenor-Defendant admits that the Scotland Neck City Board of Education hired a Superintendent of Schools and prepared to open its schools for the school year beginning in the Fall of 1969; that

except as herein admitted the allegations of Paragraph 12 are denied.

13. The allegations of Paragraph 13 are denied.

14. The allegations of Paragraph 14 are untrue and are denied; further answering said paragraph, Intervenor-Defendant alleges that it is untrue that the size and pupil enrollment should control the size of the educational administrative unit; that large educational units with marching bands, football teams, gymnasiums and many social and athletic events and numerous extracurricular activities are desired by those who still worship the outworn creed and bankrupt philosophy of so-called progressive education in which system actual imparting of knowledge and instruction of the pupil is lost in the shuffle; that in many cases the smaller unit furnishes better financing, better instructors and graduates a student of high caliber who completes his college education; it is further alleged that the people have the constitutional right to determine the type of administrative unit they desire and not theoretical so-called educators who desire a bureaucratic, dictatorial public school system under their complete control; that the Federal Government has no constitutional right, under the guise of constitutional interpretation, to determine the type and size of the school administrative unit that the people of the State shall have and use.

15. The allegations of Paragraph 15 are untrue and are denied; further answering said paragraph, the Intervenor-Defendant alleges that Chapter 31 of the Session Laws of 1969, is a constitutional and valid act of the General Assembly of North Carolina and is within the scope and authority of said General Assembly; that county and city boards of education as the proper agencies of administering the public schools of the State have been in force and effect since the School Machinery Acts of 1933 and 1935 and there is some 160 to 180 such administrative units established in the State; that there are administrative school units in the State that are as small, and some slightly larger, as the Scotland Neck City Administrative Unit and they have operated for some years; that the Scotland Neck City Board of Education

has never had the chance to administer its school system and constitutional attack on its proposed or future administration is nothing but speculation and conjecture; that no constitutional attack of this nature can be made until the practical results of such administration are available; that if Chapter 31 of the Session Laws of 1969, is unconstitutional and invalid then the stability of every school administrative unit in the State of North Carolina is endangered and subject to attack if the members of the black race are dissatisfied and displeased with its boundaries and enrollment limitations and it will take a Federal decree to settle every boundary and attendance area; it is again denied that Chapter 31 of the Session Laws of 1969, is unconstitutional and invalid or that it violates any provision of the Fourteenth Amendment to the Constitution of the United States and it is alleged that those who pay the largest part of the taxes that support the public school system of the State should have some voice in public school administration.

16. The allegations of Paragraph 16 are untrue and are denied.

CLAIM TWO

17. That the answers to Paragraphs 1, 2, 3, 7 and 8 of Claim One of this Amended Complaint are here realleged in this Claim and are made a part hereof by reference.

18. That the Intervenor-Defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18, and, therefore, denies the same.

19. That the allegations of Paragraph 19 relate to the Halifax County Board of Education and this Intervenor-Defendant does not know what alternative methods of pupil assignment are available for this county unit, and, therefore, denies said Paragraph 19.

20. That Intervenor-Defendant does not know what the Halifax County School Administrative Unit has failed and refused to do nor what plan of desegregation it has failed to adopt, and, therefore, denies said paragraph 20.

21. The allegations of Paragraph 21 are untrue and are, therefore, denied.

22. The allegations of Paragraph 22 are untrue and are denied.

WHEREFORE: having fully answered, the Intervenor-Defendant prays the Court:

(a) That Chapter 31 of the Session Laws of 1969, enacted by the General Assembly of North Carolina, be declared to be constitutional and valid.

(b) That this action be dismissed and the Temporary Restraining Order heretofore entered in this cause be dismissed.

(c) That such other and further relief be granted by the Court as may be proper and just.

/s/ Robert Morgan
Attorney General of
North Carolina

/s/ Ralph Moody
Deputy Attorney General of
North Carolina
P. O. Box 629
Justice Building
Raleigh, North Carolina 27602

[Caption Omitted]

ORDER

This cause coming on to be heard before the Court on a motion for a preliminary injunction filed by the plaintiff seeking to restrain the defendants from giving any force or effect to the provision of Chapter 31 of the North Carolina Session Laws of 1969, an Act to establish a separate unit for the operation of the public schools of the town of Scotland Neck, North Carolina and there being also before the Court a motion by the defendant, Halifax County Board of Education, that it be dismissed from that portion of this action dealing with the constitutionality of the Scotland Neck Act as said defendant was not a party to the creation of said Scotland Neck Unit; and it appearing to the Court that said defendant, since it was not a party to the creation of said Act, should not be put to the expense of defending this action in this Court or in any subsequent appeals, if any there be, as said defendant is already before the Court charged with violation of the Civil Rights Act and will be bound by the orders of this Court to comply with all the laws, state and federal, affecting the public schools in Halifax County;

It is therefore, ORDERED, ADJUDGED and DECREED:

THAT the motion of the defendant that it be dismissed from this action is allowed insofar as the question of the constitutionality of the Act creating the Scotland Neck Unit is concerned. Said defendant will no longer be required to defend or appear in subsequent actions involving only the constitutionality of the Act creating said unit, but said defendant is not relieved from the other parts of this action involving its violation of the Civil Rights Act, but shall comply with the orders of this Court, and orders of any Appellate Court or the Supreme Court of the United States of America, as they may effect the operations of the public schools of Halifax County.

THAT this ORDER shall become effective as soon as it is executed by the Court.

Let this ORDER be entered forthwith.

This the 3rd day of November, 1969.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

ALGERNON L. BUTLER
United States District Judge

Raleigh, North Carolina
October ...., 1969

PLAINTIFF'S EXHIBIT #38

Civil Action No. 1128

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANT HALIFAX COUNTY BOARD OF EDUCATION

October 28, 1969

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA

WILSON DIVISION

Civil Action No. 1128

UNITED STATES OF AMERICA, PLAINTIFF,

v.

HALIFAX COUNTY BOARD OF EDUCATION, a body corporate, and the SCOTLAND NECK CITY BOARD OF EDUCATION, a body corporate, DEFENDANTS.

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANT HALIFAX COUNTY BOARD OF EDUCATION

APPENDIX

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1. Please state the name, location, grades served, date of construction and any substantial additions, and attendance zone lines for each school in defendant's school unit for the 1969-70 school year. If there are no present attendance zones, describe the lines for the zones for the last year before they were eliminated, and state what year that was. If possible, please show as much of this information as practicable on a map, such as a general highway map prepared by the North Carolina Highway Department.

1. The names of schools, grades served, date of construction and substantial additions for the schools in Halifax County Unit in the 1969-70 school unit are shown on the attached form. (See attached sheet No. 1). The location of these schools are shown on the attached map (See attached map No. 1).

There were no attendance zones during the 1968-69 school year except for pupils in grades 7 and 8 who were transferred to predominantly white schools as follows:

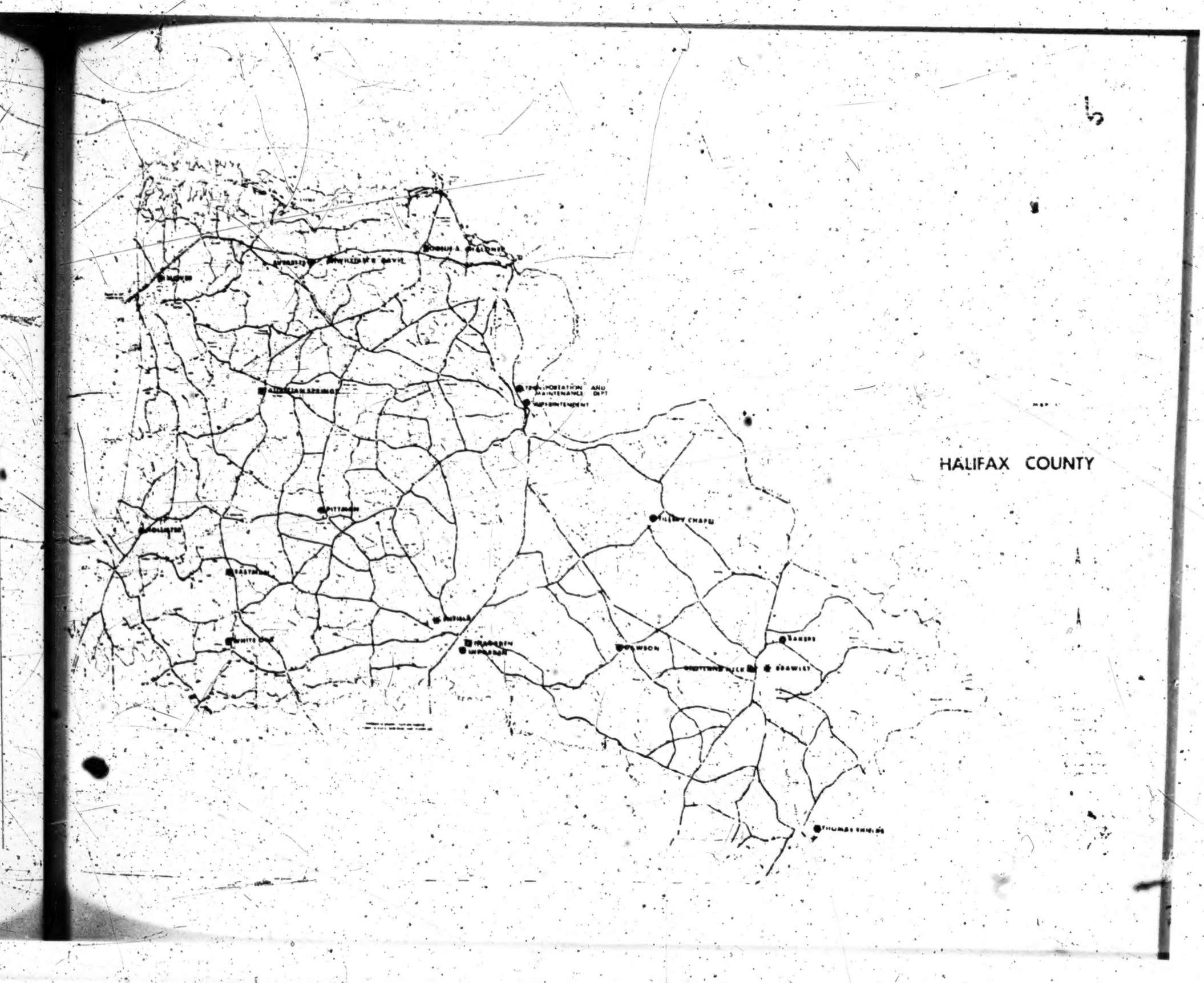
- Grades 7 and 8 from John A. Chaloner School to William R. Davie School.
- Grades 7 and 8 from McIver School to Aurelian Springs School.
- Grades 7 from Inborden Elementary School to Enfield School.
- Grades 7 and 8 from Brawley School to Scotland Neck School.

There are no attendance zones for the 1969-70 school year.

School	Grades Served	Date of Construction	Date of substantial additions
Aurelian Springs Route 2, Littleton, N. C.	1-12	1922—4 classrooms Auditorium	1925—4 classrooms, 1 library 1929—5 classrooms, library 1934—6 classrooms 1935—1 classroom, 1 shop 1948—Gym-Cafeteria 1959—3 classrooms
Bakers Elem. Route 1, Box 103 Scotland Neck, N.C.	1-8	1959—10 classrooms 1 Library	1961—3 classrooms, 1 Cafetorium
Brawley School Scotland Neck North Carolina	1-12	1926—8 classrooms 1 Library	1937—8 classrooms 1942—2 classrooms, 1 shop 1951—5 classrooms, 1 library 1955—5 classrooms 1960—Gymntorium, 4 classrooms 1968—Cafeteria
Dawson Elem. Scotland Neck North Carolina	1-8	1938—4 classroom 1 Music Room	1957—6 classrooms 1960—10 classrooms, 1 library, Cafetorium
Eastman Route 2, Enfield, N.C.	1-12	1947—1 cl. sroom 1 sh	1949—Gymtorium 1953—5 classrooms, 1 library 1956—7 classrooms 1959—13 classrooms, 1 library 1968—Cafetorium
Enfield Graded Enfield, N.C.	1-12	1948—20 classrooms Library Auditorium Cafeteria Gym	1952—1 classroom, 1 shop

School	Grades Served	Date of Construction	Date of substantial additions
Everetts Elem. Route 1, Roanoke Rapids, N.C.	1-8	1958—14 classrooms Library	1960—6 classrooms, Cafetorium
Hollister Elem. Hollister, N.C.	1-8	1960—13 classrooms	1966—Cafetorium, Library
Inborden Elem. Enfield, N.C.	1-8	1948—12 classrooms cafeteria	1954—2 classrooms 1956—2 classrooms, library 1960—12 classrooms 1969—Cafetorium
Inborden High Enfield, N.C.	9-12	1951—5 classrooms library	1955—3 classrooms, Gymtorium 1961—1 classroom, 1 shop
J. A. Chaloner Roanoke Rapids North Carolina	1-12	1924—5 classrooms library auditorium	1938—4 classrooms 1940—1 classroom, 1 shop 1941—7 classrooms, cafeteria 1942—1 classroom 1944—1 music room 1945—Gymnasium 1950—2 classrooms 1955—6 classrooms 1958—9 classrooms, library
McIver High Littleton, N.C.	1-12	1925—6 classrooms	1930—4 classrooms 1941—band room, 1 classroom, 1 shop 1948—Gymnasium 1954—2 classrooms, library 1959—8 classrooms 1964—6 classrooms 1968—cafetorium

School	Grades Served	Date of Construction	Date of substantial additions
Pittman Elem. Route 3, Enfield, N.C.	1-8	1959—15 classrooms library	1960—cafetorium, 1 classroom
Scotland Neck School Scotland Neck, N.C.	1-12	1903—12 classrooms library	1923—cafeteria, 8 classrooms, library 1939—1 Home Ec. Lab., 2 classrooms, 1 shop, Gymnasium 1949—1 classroom 1954—4 classrooms, auditorium 1960—4 classrooms, cafeteria, library
Thomas Shields Hobgood, N.C.	1-8	1957—6 classrooms	1958—4 classrooms 1961—library, cafetorium
Tillery Chapel Elem. Tillery, N.C.	1-8	1932—4 classrooms	1957—6 classrooms 1962—1 classrooms, library, cafetorium.
White Oak Route 2, Enfield, N.C.	1-8	1959—10 classrooms	1966—1 classroom, library, cafetorium.
Wm. R. Davie Route 1, Roanoke Rapids, N.C.	1-12	1940—11 classrooms 1 library auditorium	1952—4 classrooms, library 1953—1 shop, cafeteria, gymnasium. 1955—5 classrooms 1958—4 classrooms 1961—2 classrooms


HALIFAX COUNTY

2. Please describe any changes in the number, names, locations, grades served or attendance zone lines of the schools in defendant's school unit since the beginning of the 1964-65 school year.

2. Changes in school organization since the beginning of the 1964-65 school term are as follows:

a. John Armstrong Chaloner School formerly in Roanoke Rapids City School Unit, by order of officials of the Civil Rights Division of the U.S. Department of Health, Education and Welfare, by agreement between the Boards of Education of Roanoke Rapids City School Unit and the Halifax County School Unit and by action of the State Board of Education began operating as a part of the Halifax County School Unit at the beginning of the 1966-67 school year. This school had been operating to serve approximately 80% who were living within the Halifax County Unit. Approximately, 190 students or 20% living within the boundaries of Roanoke Rapids City Administrative Unit transferred to other schools in the Roanoke Rapids Unit.

b. Hobgood School, grades 1-8, was closed at the end of the 1966-67 school year. By choice, elementary students have been attending Scotland Neck School from the beginning of the 1967-68 school year. The Scotland Neck School attendance area for grades 1-12 became the same as the attendance area for the grades 9-12. (See map attached, No. 1).

c. Upon closing the high school department of the Haliwa School in Warren County, approximately 70 students in grades 9-12 who live near Hollister in Halifax County transferred to schools in Halifax County at the beginning of the 1967-68 school year. The elementary department of the Haliwa School was closed at the end of the 1968-69 school year and approximately 140 students grades 1-8 who live in Halifax County transferred to schools in Halifax County.

2. (d) Upon closing grades 1-5 of the Littleton School in Warren County at the close of the 1968-69 school term

approximately 60 students who live in Halifax County were transferred to Halifax County Schools. (See attached map No. 1).

3. (a) Please state the enrollment in each school by grade and race for the 1964-65, 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70 school years, and for any other school year in which there was any desegregation of pupils in the system.

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Aurelian Springs

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1	30		20		25		26		25	3	16	(20)
2	21		28		17		28		25		25	(17)1
3	23		23		25	1	16	1	28		19	(21)
4	26		28		20	1	28	1	20		23	(19)
5	31		27		23		21	1	29	1	18	(23)1
6	29		33		23	1	25		19		27	(15)1
7	36		28		30	1	24	1	25	53	18	(12)
8	37		39		26		29	2	22	64	25	(15)
Spec. Ed.												(12)
9	38		46		38	17	31	22	31	23	14	(22)3
10	27		33		42	14	29	17	26	18	29	(14)4
11	33		25		35	11	38	13	31	13	25	(16)3
12	24		30		23	12	26	14	36	10	24	(12)1
TOTAL	365		360		326	58	321	72	317	186	263	232

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Bakers

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		49		42		39		36		27		36
2		44		49		37		42		34		29
3		52		39		41		31		36		39
4		47		41		36		37		29		39
5		45		41		33		39		43		27
6		43		49		41		34		38		45
7		43		47		56		86		33		34
8		42		37		44		49		34		35
Spec. Ed.		18		18		20		15		9		
9												
10												
11												
12												
TOTAL		383		363		347		319		283		284

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Brawley

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		65		61		63		48		60		50
2		67		61		52		50		59		54
3		70		62		54		49		54		53
4		71		66		55		56		49		55
5		72		70		58		55		66		42
6		66		74		75		58		61		52
7		69		68		73		82				48
8		61		68		70		80				56
Spec. Ed.		18		18		18		35		15		
9		221		234		218		232		288		247
10		161		170		192		157		182		184
11		112		111		143		141		154		152
12		104		96		106		108		118		124
TOTAL		1157		1159		1177		1151		1106		1117

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Dawson

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		80		67		66		56		49		39
2		70		74		62		56		51		42
3		72		68		67		54		51		41
4		83		61		60		59		48		48
5		77		75		62		55		59		39
6		62		71		78		60		50		52
7		54		55		66		63		62		48
8		64		49		52		56		63		54
Spec. Ed.				16		14		16		26		27
9												
10												
11												
12												
TOTAL		562		536		522		475		459		390

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Eastman

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		71		61		54		57		50		46
2		63		62		63		50		58		56(1)
3		76		62		53		68		41		48
4		59		63		65		42		65		49(1)
5		74		50		59		55		46		51
6		75		63		54		63		54		46
7		67		69		65		55		59		54
8		54		56		63(7)		64		59		59
Spec. Ed.												42
9		147		138		158(1)		158(3)		167(2)		137
10		113		124		118		139(3)		146		158(1)
11		93		92		104		107		108		122
12		76		88		88		101		97		105
TOTAL		968		928		952		965		952		976

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Enfield Graded

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1	42	3	31	4	26	3	30	6	35	2	15	1
2	43		33	12	29	5	24	7	27	5	20	4
3	42		37	1	33	9	30	7	27	5	18	7
4	44		36		31	4	33	9	31	6	18	6
5	45		42		29	4	37	6	34	10	19	7
6	42		44		37	5	30	5	32	7	28	8
7	35		41		47	4	42	7	31	123	23	20
8	41		37	1	40	2	47	7	47	6	16	17
Spec. Ed.	11		10		11							
9	33		39	8	35	3	40	1	45	5	26	9
10	52	2	28	11	33	6	30	5	31	2	32	7
11	40	1	43	14	28	12	35	7	34	1	17	3
12	37		35	8	40	10	26	10	28	5	24	
TOTAL	505	6	456	59	419	67	404	77	402	177	256	89

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Everetts

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		89		96		76		83		56		57
2		66		78		83		63		66		46
3		86		70		65		77		62		66
4		67		91		58		62		67		56
5		82		69		69		55		57		72
6		70		73		58		61		50		47
7		67		67		64		51		60		50
8		71		70		56		52		36		55
Spec. Ed.						18		16		24		11
9												
10												
11												
12												
TOTAL		598		614		547		520		478		460

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

[Raleigh News & Observer, 2/12/69]

HALIFAX ANNOUNCES SCHOOL PLAN

HALIFAX—The Halifax County Board of Education announced a desegregation plan Tuesday affecting its 18 public schools, four of which are predominantly white and 14 all-Negro.

C. M. Moore Jr., chairman, said the plan resulted from demands by the U.S. Department of Justice in July, 1968, that a dual system be eliminated and that the Halifax schools be in full compliance with the Civil Rights Act of 1964 at the beginning of the 1969-70 school year.

Halifax was ordered to submit its plan to the Department of Justice not later than March 15, 1969.

The plan specifies that any student assigned to a school where there is less than 15 per cent of his race or less than 15 per cent of a race different from his own, may be assigned to a school where such a situation does not exist.

A student desiring such a transfer must make a "timely-request" and furnish his own transportation to the school to which he transfers.

Staff and faculty, according to the plan, shall be assigned as far as possible to constitute the same ratio between white and Negro races as exists in student body.

The plan further states, however, that no school faculty shall be comprised of less than 12 per cent of either Negro or white.

The dual bus system now used to transport students to and from school will be eliminated. The buses will be operated without regard to race.

There are approximately 10,655 students in the Halifax school system, including 8,196 Negro students, 2,357 whites and 102 Indian students. There are 447 teachers, including 322 Negro, 123 white and two Indian.

[News & Observer, 2/14/69]

RUSH TO THE REAR

One of the most astute comments so far on the Scotland Neck school separation movement came from a local foe who called it "a step backward when we should be going forward."

Instead of striving to strengthen all Halifax County schools through consolidation, Scotland Neck people supporting an independent school unit for their town limit a desire for better education to municipal boundaries. They want town money confined to town schools. Presumably, the rest of Halifax could just go begging.

Shrewd strategists are at work arguing through the General Assembly the bill permitting a local referendum on the separate unit idea. They claim that there's no hope for passage of a countywide school tax, while Scotland Neck people probably would support a town levy. And as Rep. Thorne Gregory said on behalf of the referendum bill he introduced, "the people of Scotland Neck know what's best for us."

What Scotland Neck separatists obviously believe best for them is an educational island dominated by whites. Statistics make this clear. The Halifax County school system now has about 8,100 Negroes and 2,300 whites; a Scotland Neck unit would have some 736 whites and 193 Negroes. The county school system must fully integrate by September. Undoubtedly, Scotland Neck would prefer to do its own integrating. By creating a sharper racial imbalance in municipal schools, the town would promote a sharper imbalance—in reverse—out in the county.

The forgotten ones in this matter are the children who would remain in the Halifax County school system. If Scotland Neck pulls out, county schools will be left with just 37 per cent of Halifax's taxable property from which to draw support for educating roughly 67 per cent of Halifax children. The State, furthermore, would have to subsidize this inequity by footing a $22,000 bill for Scotland Neck's school administrative offices.

The separation bill got through the House on Wednesday, aided by an incredible argument that since it was local legislation, balking at it would be a personal insult to the sponsor. Surely the Senate will display a more responsible concern over this measure, which is local in name only and far removed from the usual pay hike or dog tax proposal. It suggests a precedent which truly would be a rush to the rear, and North Carolina could pay for it with inferior county schools and deteriorating race relations.

[Raleigh News & Observer, February 22, 1969]

NEW STATE POLICY?

If the State Senate approves the Scotland Neck school bill, it will do more than separate the present Halifax County School System into two units—with most of the county's white pupils in a new Scotland Neck unit. Indisputably the Senate also will set a new State policy contrary to the desirable trend toward consolidation and contrary to the spirit if not the letter of federal law.

This is no simple matter of acceding to a local government request, of letting the people involved have the kind of school structure they want. The State legislature will be giving official endorsement and $22,000 in State funds for the fragmentation of a school system now so small it is lacking in some aspects of educational soundness and efficiency.

The example will not be lost on other school systems confronted with similar racial problems. They will seek —and how can the legislature deny them?—the same course of least resistance, the same creation of new school units with less racial accommodation. And in each instance the State will be footing the bill for new administrative costs and putting its stamp of acceptance on the educational inefficiency and racial ill will created.

This would be new State policy of using the legislature to evade national policy. If it failed—if the courts struck it down—it would create new and unnecessary

enmity within our governmental systems. If it succeeded, it would encourage more racial apartness and distrust. Negro North Carolinians would be given an object lesson in White Power, and a mocking example of Law and Order with Justice.

The Halifax County school system may have special problems. The legislature could provide the education tools and money to help meet them. It still could postpone action until it researched such possible alternatives. The Scotland Neck school bill is a change in State policy, with far reaching consequences. It ought not to be enacted without further search for a wiser, less harmful answer to the concerns of Scotland Neck people.

OFFICE COPY

FILED
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E. ROBERT SEAVER, CLERK

APPENDIX

Vol. III (pp. 788-1155)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-130

UNITED STATES OF AMERICA,
Petitioner,

—v.—

SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL.,
Respondents.

No. 70-187

PATTIE BLACK COTTON, ET AL.,
Petitioners.

—v.—

SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT ON APPEALS FOR THE FOURTH CIRCUIT

PETITIONS FOR WRITS OF CERTIORARI FILED APRIL 22, 1971 AND MAY 20, 1971
CERTIORARI GRANTED OCTOBER 12, 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-130

UNITED STATES OF AMERICA,
Petitioner,

—v.—

SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL.,
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Halifax County map indicating the school districts and different schools 1155

[Caption Omitted]

ORDER

LARKINS, District Judge:

This cause coming on to be heard before the Court on a motion for a preliminary injunction filed by the plaintiff pursuant to the provisions of Sections 407(a) and (b) of the Civil Rights Act of 1964, as codified, 42 U.S.C.A. §§ 2000c-6(a) and (b) seeking to restrain the defendants from giving any force or effect to the provisions of Chapter 31 of the North Carolina Session Laws of 1969, an Act to establish a separate administrative unit for the operation of the public schools of the Town of Scotland Neck, North Carolina; and due notice having been given to the defendants; and the Court having considered the evidence and the argument of counsel and being fully advised in the premises; and it appearing to the Court that effectuation of the terms of the Act will result in the operation of the schools of Scotland Neck, North Carolina, and Halifax County, North Carolina, on a racially discriminatory basis to the irreparable damage of the United States and the Negro pupils of Halifax County; and it further appearing to the Court that no injunctive relief as to effectuation of the provisions of Chapter 31 is being sought against the defendant Halifax County Board of Education; and that the defendants Ferd L. Harrison, as Mayor of the Town of Scotland Neck, J. A. Andrews, F. G. Shearin, J. I. Walston, D. E. Josey, Jr., as members of the Board of Commissioners of the Town of Scotland Neck, and the Town of Scotland Neck, a body corporate, are not proper parties to this action;

It is, therefore, ORDERED, ADJUDGED and DECREED:

THAT the motion to dismiss filed on behalf of the defendants Ferd L. Harrison, as Mayor of the Town of Scotland Neck, J. A. Andrews, F. G. Shearin, J. I. Walston, D. E. Josey, Jr., as members of the Board of Com-

missioners of the Town of Scotland Neck, and the Town of Scotland Neck, a body corporate, be, and the same hereby is allowed; and

THAT the defendant Scotland Neck City Board of Education and its officers, agents, employees and successors are hereby enjoined from giving any force or effect to the provisions of Chapter 31 and from taking any action pursuant to the provisions of Chapter 31 pending a final determination on the merits of the issues raised in the present action; and

THAT pursuant to the provisions of Rule 65(c) of the Federal Rules of Civil Procedure, no security shall be required of the plaintiff, United States of America; and

THAT this ORDER shall become effective as of 12:00 Noon on Monday, August 25, 1969; and

THAT a Memorandum Opinion subsequently will be filed in this action; and

THAT the Clerk shall serve copies of this ORDER upon all counsel of record, and the defendants.

Let this ORDER be entered forthwith.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

/s/ Algernon L. Butler
ALGERNON L. BUTLER
United States District Judge

Raleigh, North Carolina
August 25, 1969

[Caption Omitted]

MEMORANDUM OPINION

LARKINS, District Judge:

This Court entered its ORDER on August 25, 1969, effective at 12:00 noon. The Clerk served copies of said ORDER upon all defendants and counsel of record.

Pursuant to said ORDER this MEMORANDUM OPINION is filed in support of said ORDER and is included therein by reference.

This cause coming on to be heard before the United States District Judges for the Eastern District of North Carolina, and being heard upon the motions of plaintiffs and additional plaintiffs for a preliminary injunction and for a declaratory judgment; and due notice having been given to all defendants; and the Court having considered the evidence, the stipulations, the briefs and arguments of counsel, and being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. On March 3, 1969, the General Assembly of North Carolina ratified a measure designated Chapter 31, Session Laws of North Carolina 1969, creating the Scotland Neck City Administrative Unit in Halifax County to operate the public schools in said unit; providing that all public school property located within the unit should become the property of the unit; providing for a supplemental tax levy, and directing a special election to authorize the establishment of said unit and the levying of said tax. The voters approved said proposals.

2. The Board of Education of the Scotland Neck City unit permits transfers of students in and out of said units. Scotland Neck City has established a tuition charge of $100.00 a year for the first child in a family, $25.00 for the second child, $25.00 for the third child, and each subsequent child per family free, for all students transferring into said unit.

3. During the school year 1968-69, all the public schools of Halifax County were operated by the Halifax

County Board of Education. There was a total of 10,655 students. The racial composition of the county school system was approximately as follows: White, 2,357 (22%); Negro, 8,196 (78%), and Indian, 102.

4. The Scotland Neck City unit has approximately 695 *resident* students: White, 399 (57.4%); Negro, 296 (42.6%). The school facilities within the unit will accommodate approximately 1,000 students. Since the creation of the City unit under the 1969 Act, 350 Whites, and 10 Negroes have transferred from the county schools into the City unit; 44 Negroes in the eleventh and twelfth grades have transferred from the city to the Brawley High School in the county system. The net effect on the City unit for the school year 1969-70 is as follows: White, 759 (74%); Negro, 262 (26%).

5. The racial composition of the county school system as a result of the creation of the administrative unit, and taking into consideration the net effect of the transfers in and out of the systems, is as follows: White, 1,598 (17%); Negroes, 8,186 (83%); Indian, 102.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and of the subject matter of this proceeding.

2. Without determining the constitutionality of Chapter 31 of the 1969 Session Laws of North Carolina, the Act in its application creates a refuge for white students, and promotes segregated schools in Halifax County.

3. The Act impedes and defeats the Halifax County Board of Education from implementing its plan to completely desegregate all of the public schools in Halifax County by the opening of the school year 1969-70.

4. Unless the defendants are enjoined, the plaintiffs will suffer immediate and irreparable injury by the deprivation of their constitutional rights.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

Raleigh, North Carolina
August 25, 1969

[Caption Omitted]

AMENDED ANSWER

The defendant, The Scotland Neck City Board of Education, a body corporate, answering the Amended Complaint, alleges and says:

1. That as to the allegations contained in Paragraph 1, Claim One, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

2. That the allegations contained in Paragraph 2 of Claim One are admitted.

3. That as to the allegations contained in Paragraph 3, Claim One, it is admitted that the defendant Halifax County Board of Education (hereinafter the Halifax County Board) is a body corporate, organized and existing under the laws of the State of North Carolina, and it has a duty under North Carolina law to operate a public school system in Halifax County, North Carolina other than in the Town of Scotland Neck.

4. That the allegations contained in paragraph 4 of Claim One are admitted.

5. That the allegations contained in Paragraph 5 of Claim One are admitted.

6. That the allegations contained in Paragraph 6 of Claim One are admitted.

7. That as to the allegations contained in Paragraph 7, Claim One, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

8. That the allegations contained in Paragraph 8 of Claim One are admitted.

9. That the allegations contained in Paragraph 9 of Claim One are admitted.

10. That the allegations contained in Paragraph 10 of Claim One are admitted.

11. That the allegations contained in Paragraph 11 of Claim One are admitted.

12. That as to the allegations contained in Paragraph 12 of Claim One it is admitted that the Scotland Neck

Board has hired a Superintendent of Schools and is prepared to open its schools for students on August 28, 1969, and it is further admitted that the vast majority of the students who will attend the schools of the Scotland Neck City Administrative Unit during the 1969-70 school year attended schools operated by the Halifax County Board during the previous year; all other allegations contained in Paragraph 12 are denied.

13. The allegations and averments contained in Paragraph 13, Claim One are denied.

14. The allegations and averments contained in Paragraph 14, Claim One are denied.

15. The allegations and averments contained in Paragraph 15, Claim One are denied.

16. It is admitted that unless restrained by order of the Court this answering defendant will continue to give full force and effect to the provisions of Chapter 31; all other allegations contained in Paragraph 16 are denied.

17. That as to the allegations contained in Paragraph 17 of Claim Two, which realleges Paragraphs 1, 2, 3, 7 and 8 of the Claim One, this defendant answers said paragraph in the same manner as above.

18. That as to the allegations contained in Paragraph 18, Claim Two, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

19. That as to the allegations contained in Paragraph 19, Claim Two, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

20. That as to the allegations contained in Paragraph 20, Claim Two, the answering defendant is not sufficiently informed concerning the averments contained therein from which to form a belief and hence denies same.

21. The allegations and averments contained in Paragraph 21, Claim Two are denied.

22. The allegations and averments contained in Paragraph 22, Claim Two are denied.

FIRST FURTHER ANSWER

For a First Further Answer to the Plaintiff's amended complaint this Defendant alleges and says:

1. The Statute (North Carolina Session Laws 1969, Chapter 31) hereafter called the "Statute," the constitutionality of which is here challenged by the Plaintiff, followed a long established North Carolina legislative precedent and pattern of the formation of a special administrative school unit within a county consisting usually of a municipality. There are in North Carolina, exclusive of Scotland Neck, fifty-two special municipal administrative school units.

2. The Statute created a special school administrative unit; the boundaries of which were designated as the municipal boundaries of the Town of Scotland Neck. Within the geographic boundaries of the Town of Scotland Neck there now reside approximately 751 students of school age; 56.86 percent of which are white and 43.14 percent of which are negro. Classroom facilities within the town limits can accommodate approximately 812 students; 784 of which are accommodated by permanent facilities and 28 of which are accommodated by a mobile classroom.

3. The Statute provides, as conditions precedent to the formation of the unit, a vote of the people in Scotland Neck approving both the formation of the unit and the imposition of a school tax of 50 cents on the dollar of taxable property valuation in the town.

4. By election held pursuant to the Statute, the people of Scotland Neck approved both the formation and the imposition of the special school tax.

5. The resident school population is sufficient to constitute an efficient separate school administrative unit, and the special tax funds will enable the Defendant to offer to its resident students an educational system which is greatly superior to that heretofore enjoyed by them and superior to that which would be available to them if there were no such tax. Defendant made ar-

rangements to operate such an improved school system in Scotland Neck for the school year 1969-1970.

6. On August 25, 1969 there was issued a temporary injunction in this cause, preventing Defendant from taking any further steps in connection with the operation of a school unit until the final determination of the merits of this cause.

7. The single issue in this case is the constitutionality of the Statute. The issue is not the propriety or the legality of whatever might, from time to time, be the plan or plans of operation under the Statute.

8. It is the present intention of this Defendant, and this Defendant makes this continuing representation, that, if and when there is removed the temporary injunction barrier preventing operation under the Statute, Defendant will confine its student body to those students residing within the geographical limits of the town of Scotland Neck, plus or minus such student transfers as may be in conformity to the law and/or Court order or orders applicable to Defendant, and in conformity to a plan of limitation of transfers to be prepared by Defendant and submitted to this Court.

WHEREFORE, this Defendant respectfully prays that:

1. The Court declare to be constitutional Chapter 81 of the 1969 Session Laws of North Carolina;

2. The Court dissolve the temporary injunction heretofore issued in this cause on the 25th day of August, 1969;

3. The Court retain jurisdiction of this cause for the receipt of a plan of transfer to be submitted by the Defendant to the Court and for the hearing of any objection that may be filed thereto.

C. KITCHIN JOSEY

/s/ William T. Joyner
WILLIAM T. JOYNER

/s/ Walton K. Joyner
WALTON K. JOYNER
Attorneys for the defendant, Scotland Neck City Board of Education, a body corporate

[Caption Omitted]

MOTION

Now comes the defendant, the Scotland Neck City Board of Education, a body corporate, by and through its attorney, C. Kitchin Josey, and respectfully shows unto the Court:

1.

That at 12 o'clock noon on the 25th day of August, 1969, an order was entered in this cause enjoining this defendant "from taking any action pursuant to the provisions of Chapter 31 (of the 1969 Session Laws of North Carolina) pending a final determination on the merits of the issues raised in the present action."

2.

That prior to the entering of the above mentioned order this defendant in its official capacity and in accordance with the laws of the State of North Carolina under its then policy accepted students that lived outside the school administrative unit boundaries on a tuition basis receiving approximately $11,656.53 from the parents of such tuition students. Of this amount $2,970.66 was expended by this defendant for obligations incurred prior to the entering of the above mentioned order.

3.

That the defendant, the Scotland Neck City Board of Education, desires to repay in full the parents of the students who have previously paid in these tuition funds.

4.

That the Scotland Neck City Board of Education has heretofore incurred certain legal expenses in connection with the defense of this cause and the said defendant expects to incur certain additional expenses until this matter is finally determined.

5.

That this defendant has been offered certain private donations from citizens in this area and particularly the citizens of the Town of Scotland Neck for the purpose of repaying the parents of the tuition students and for the purpose of defraying expense of defending this law suit.

WHEREFORE, this defendant prays the Court that an order be entered modifying the temporary injunction order of August 25, 1969, to the effect that the defendant, the Scotland Neck City Board of Education, be allowed to receive donations from private sources and to use such funds, together with the tuition funds now in its hands, for the repayment of the amounts heretofore paid by parents of tuition students, and further that said Board be permitted to use said privately donated funds for the purpose of legal expenses and fees incurred and to be incurred until this matter is finally determined.

This the 12th day of September, 1969.

/s/ C. Kitchin Josey
C. KITCHIN JOSEY, William T. Joyner and Walton K. Joyner, Attorneys for the Scotland Neck City Board of Education

[Caption Omitted]

ORDER

This cause coming on to be heard on a Motion by the defendant, the Scotland Neck City Board of Education, a body corporate, for a modification of the order of preliminary injunction heretofore entered by this Court at 12 o'clock noon on August 25, 1969, to the effect that certain funds now in said defendant's hands and certain private donations be authorized for use by said defendant to repay certain parents of tuition students and for authority to use said privately donated funds for the purpose of defraying legal expenses in connection with the defense of this cause;

And it appearing to the Court that the requested modification of said temporary injunction is proper and said Motion should be allowed;

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant, the Scotland Neck City Board of Education, be allowed to receive donations from private sources and to use such funds, together with the tuition funds now in its hands, for the repayment of the amounts heretofore paid by parents of tuition students, and further that said Board be permitted to use said privately donated funds for the purpose of legal expenses and fees incurred and to be incurred until this matter is finally determined.

IT IS FURTHER ORDERED that the Clerk shall serve copies of this Order upon all counsel of record.

Let this Order be entered forthwith.

/s/ Algernon L. Butler
CHIEF UNITED STATES
DISTRICT JUDGE

/s/ John D. Larkins, Jr.
UNITED STATES
DISTRICT JUDGE

[Caption Omitted]

MOTION OF ROBERT MORGAN, ATTORNEY GENERAL OF NORTH CAROLINA, TO INTERVENE IN THIS ACTION IN BEHALF OF THE STATE OF NORTH CAROLINA, AS PARTY DEFENDANT.

Robert Morgan, Attorney General of North Carolina, in behalf of the State of North Carolina, hereby moves the Court for leave to intervene in this action in order to assert the defenses of the State of North Carolina, as set forth in the proposed Answer of which a copy is hereto attached, on the grounds and for the reasons, as follows:

1. That Applicant, Robert Morgan, is the duly elected and qualified Attorney General of the State of North Carolina, and makes this application to intervene in this action in behalf of said State of North Carolina; that North Carolina is one of the States that compose the United States of America and exercises such powers and duties as set forth in its Constitution and Laws enacted by its General Assembly and in accordance with the Constitution of the United States.

2. That this motion to intervene in this action by the Attorney General of North Carolina is made in behalf of said State of North Carolina (hereinafter referred to as: Applicant) pursuant to the Federal Rules of Civil Procedure, the same being Rule 24; that this application is made as a matter of right in that the constitutionality of one of the acts or statutes of said State is involved in said action; that applicant may be bound by any judgment entered by the Court in this action, and applicant is entitled to adequate representation on the question of the constitutionality of said State act or statute; that applicant is also entitled to intervene in this action in the discretion of the Court and as a permissive intervention in that the plaintiff relies upon the allegation of the unconstitutionality of an act or statute of this State as a part of its claim; that there is a common question of law and fact as the constitutionality of said State law or

act is drawn into question and if said intervention is allowed, as herein requested, the same will not unduly delay or prejudice the adjudication of the rights of the parties.

3. That the act of the General Assembly drawn in question as to its constitutionality in this action is Chapter 31 of the Session Laws of 1969, which became effective on the 3rd day of March, 1969; that a copy of said act is attached to the amended complaint of the United States of America and is hereby referred to as a part of this motion; that the plaintiff alleges that said act and its implementation is in violation of the Fourteenth Amendment to the Constitution of the United States and this is denied by the applicant; that applicant, if allowed to intervene in this action, will allege and assert that said act is valid and that its result is to establish a city board of education similar to many other city boards of education throughout the State of North Carolina and which have been established for many years; that if said act is held by the Court to be invalid and unconstitutional the status and establishment of all other boards of education, both city and county, will be put in jeopardy.

4. That applicant accepts the status of this action as heretofore developed but reserves the right to except to any evidence orders, rulings or proceedings that may be made or entered, or heretofore made and entered, contrary to the constitutional validity of said act or statute, and the right to argue in support of the validity of said act or statute; that applicant agrees to be bound by the temporary injunction heretofore entered in this cause but reserves the right to move that same be vacated by the Court.

5. That annexed hereto, in accordance with Rule 24 (c) of the Federal Rules of Civil Procedure is a proposed pleading entitled: "Answer of Robert Morgan, Attorney General of North Carolina, in behalf of the State of North Carolina, in Intervention." The applicant moves the Court that said pleading be deemed the appearance of applicant in support of the constitutionality of the act of the General Assembly of North Carolina, and in opposition to all pleadings and motions of the parties

hereto that have been or may be made herein insofar as said pleadings and motions are based on the contention that said act of the General Assembly of North Carolina is in any respect, or in any application, unconstitutional.

WHEREFORE: Applicant prays the Court that an order be entered herein allowing applicant to intervene in this action as a party defendant and that his proposed answer be filed as a pleading in this action; that this motion be brought on before the Court for hearing on October 24, 1969, at the Federal Courtroom in Raleigh, North Carolina, or at such other time as may be convenient and as ordered by the Court.

/s/ Robert Morgan
Attorney General of
North Carolina

/s/ Ralph Moody
Deputy Attorney General of
North Carolina
P. O. Box 629
Justice Building
Raleigh, North Carolina 27602

[Caption Omitted]

ORDER ALLOWING INTERVENTION OF ROBERT MORGAN, ATTORNEY GENERAL OF NORTH CAROLINA, IN BEHALF OF THE STATE OF NORTH CAROLINA.

This cause coming on to be heard upon the Motion of the Attorney General of North Carolina that he be allowed to intervene in this action as an Intervenor-Defendant in behalf of the State of North Carolina; and

It appearing to the Court that there is involved in this action a question as to the validity and constitutionality of an Act of the General Assembly of North Carolina; that this is a question of public interest throughout the State and involves the right of the State to create a public school administrative unit; that it is a legal possibility that the State of North Carolina may be bound by the judgment entered by the Court between the parties plaintiff and defendants as this action now stands; that there is a common question as to the validity of a similar statute involved in the Warren County case which is consolidated with this case; that the defendants in this action rely upon the validity of Chapter 31 of the Session Laws of 1969, enacted by the General Assembly of North Carolina:

IT IS, THEREFORE, ORDERED AND ADJUDGED BY THE COURT: That as a matter of right, or in the alternative, in the discretion of the Court, as a permissive right, the Attorney General of North Carolina, in behalf of the State of North Carolina, be, and he is hereby allowed, to intervene in this action as a party intervenor-Defendant, and that he be allowed to file his Answer which is attached to the Motion herein filed.

IT IS FURTHER ORDERED BY THE COURT: That said Intervenor-Defendant shall accept the status of this action as it now stands and shall be bound by the Temporary Restraining Order heretofore entered in this cause with the right to adopt the objections, exceptions and motions in this cause that have heretofore been en-

tered by the other defendants and to support the validity of Chapter 31 of the Session Laws of 1969, as enacted by the General Assembly of North Carolina.

IT IS FURTHER ORDERED BY THE COURT: That the Plaintiff be allowed to file such responsive pleading to the Answer of the Intervenor-Defendant as it shall deem to be advisable.

This the 31 day of October, 1969.

/s/ Algernon L. Butler
Chief Judge of the District Court of the United States for the Eastern District of North Carolina

/s/ John D. Larkins, Jr.
Judge of the District Court of the United States for the Eastern District of North Carolina

A True Copy, Teste:
SAMUEL A. HOWARD
Clerk

By /s/ [Illegible]
Deputy Clerk

[Caption Omitted]

ANSWER OF ROBERT MORGAN, ATTORNEY GENERAL OF NORTH CAROLINA, IN BEHALF OF THE STATE OF NORTH CAROLINA—INTERVENOR-DEFENDANT.

The Intervenor-Defendant, Robert Morgan, Attorney General of North Carolina, in behalf of the State of North Carolina, answering the original and amended complaints, filed herein, alleges:

ORIGINAL COMPLAINT

1. The Intervenor-Defendant has not knowledge or information sufficient to form a belief as to the truth of Paragraph 1 of the original complaint, and, therefore, denies the same.

2. The allegations of Paragraph 2 of the original complaint are denied.

3. The allegations of Paragraph 3 of the original complaint are admitted.

4. The allegations of Paragraph 4 of the original complaint are admitted.

5. The allegations of Paragraph 5 of the original complaint are admitted.

6. That the Intervenor-Defendant is not concerned with the matters alleged in Paragraph 6 of the original answer and neither admits or denies the same.

7. The Intervenor-Defendant is not concerned with the matters alleged in Paragraph 7 and is not required to answer same.

8. The Intervenor-Defendant is not concerned with the matters alleged in Paragraph 8 and is not required to answer same.

9. The allegations of Paragraph 9 of the original complaint are admitted.

10. The Intervenor-Defendant has not knowledge or information sufficient to form a belief as to the truth of Paragraph 10 of the original complaint, and, therefore, denies the same.

11. The allegations of Paragraph 11 are admitted.

12. The Intervenor-Defendant for lack of knowledge or information to form a belief as to the truth of Paragraph 12 of the original complaint denies the same.

13. The allegations of Paragraph 13 are denied.

14. The allegations of Paragraph 14 are denied.

15. The allegations of Paragraph 15 are denied.

CLAIM TWO

16. That Paragraphs 1, 2, 3, 6 and 8 of this Answer are re-alleged as Answers to this Claim and incorporated herein by reference as if fully set forth and alleged herein.

17. For lack of knowledge or information sufficient to form a belief as to the truth of allegations 17, they are denied.

18. The Intervenor-Defendant alleges that he is not required to answer Paragraph 18 of the original complaint since they are concerned with matters of administration.

19. Answering the allegations of Paragraph 19 of the original complaint the Intervenor-Defendant alleges that neither the State, the State Board of Education, or the State Superintendent of Public Instruction has any legal authority to fix attendance areas, assign pupils to the various facilities of the public school system, or to adopt or implement plans of desegregation; and except as here alleged said paragraph is denied.

20. On information and belief, said paragraph is denied.

21. The allegations of Paragraph 21 are denied.

AMENDED COMPLAINT

1. Answering Paragraph 1 of the amended complaint, it is admitted that the Attorney General of the United States attached to the original complaint his certification as therein shown; that it is a condition precedent to the bringing of this action that there shall be secret complaints made to the Attorney General of the United States; that any action based upon secret complaints is

void, invalid and unconstitutional and a violation of the due process clause and the equal protection of the law clause of the Fourteenth Amendment of the Constitution of the United States; that the provisions of 42 USC 2000e-6(a) and (b) are unconstitutional and void in that said provisions purport to confer jurisdiction upon Federal Courts to entertain actions based upon secret complaints, discriminate in favor of one ethnic group as against another ethnic group by furnishing government attorneys to one group as against another group, furnish costs and expenses in favor of one group as against another group, and thus create an invidious discrimination in favor of one group of citizens as against another group of citizens in violation of the Fourteenth Amendment of the Constitution of the United States; and except as herein alleged said paragraph 1 of amended complaint is untrue and is denied.

2. The allegations of Paragraph 2 of the amended complaint are untrue and are denied.

3. The allegations of Paragraph 3 are admitted.

4. The allegations of Paragraph 4 are admitted except it is denied that such action should lawfully be maintained.

5. The allegations of Paragraph 5 are admitted.

6. The allegations of Paragraph 6 are admitted.

7. That the Intervenor-Defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7, and, therefore, denies the same.

8. The allegations of Paragraph 8 are denied for lack of knowledge or information sufficient to form a belief as to the truth of same.

9. The allegations of Paragraph 9 are admitted.

10. The allegations of Paragraph 10 are admitted.

11. The allegations of Paragraph 11 are admitted.

12. Answering the allegations of Paragraph 12 on information and belief, Intervenor-Defendant admits that the Scotland Neck City Board of Education hired a Superintendent of Schools and prepared to open its schools for the school year beginning in the Fall of 1969; that

except as herein admitted the allegations of Paragraph 12 are denied.

13. The allegations of Paragraph 13 are denied.

14. The allegations of Paragraph 14 are untrue and are denied; further answering said paragraph, Intervenor-Defendant alleges that it is untrue that the size and pupil enrollment should control the size of the educational administrative unit; that large educational units with marching bands, football teams, gymnasiums and many social and athletic events and numerous extracurricular activities are desired by those who still worship the outworn creed and bankrupt philosophy of so-called progressive education in which system actual imparting of knowledge and instruction of the pupil is lost in the shuffle; that in many cases the smaller unit furnishes better financing, better instructors and graduates a student of high caliber who completes his college education; it is further alleged that the people have the constitutional right to determine the type of administrative unit they desire and not theoretical so-called educators who desire a bureaucratic, dictatorial public school system under their complete control; that the Federal Government has no constitutional right, under the guise of constitutional interpretation, to determine the type and size of the school administrative unit that the people of the State shall have and use.

15. The allegations of Paragraph 15 are untrue and are denied; further answering said paragraph, the Intervenor-Defendant alleges that Chapter 31 of the Session Laws of 1969, is a constitutional and valid act of the General Assembly of North Carolina and is within the scope and authority of said General Assembly; that county and city boards of education as the proper agencies of administering the public schools of the State have been in force and effect since the School Machinery Acts of 1933 and 1935 and there is some 160 to 180 such administrative units established in the State; that there are administrative school units in the State that are as small, and some slightly larger, as the Scotland Neck City Administrative Unit and they have operated for some years; that the Scotland Neck City Board of Education

has never had the chance to administer its school system and constitutional attack on its proposed or future administration is nothing but speculation and conjecture; that no constitutional attack of this nature can be made until the practical results of such administration are available; that if Chapter 31 of the Session Laws of 1969, is unconstitutional and invalid then the stability of every school administrative unit in the State of North Carolina is endangered and subject to attack if the members of the black race are dissatisfied and displeased with its boundaries and enrollment limitations and it will take a Federal decree to settle every boundary and attendance area; it is again denied that Chapter 31 of the Session Laws of 1969, is unconstitutional and invalid or that it violates any provision of the Fourteenth Amendment to the Constitution of the United States and it is alleged that those who pay the largest part of the taxes that support the public school system of the State should have some voice in public school administration.

16. The allegations of Paragraph 16 are untrue and are denied.

CLAIM TWO

17. That the answers to Paragraphs 1, 2, 3, 7 and 8 of Claim One of this Amended Complaint are here realleged in this Claim and are made a part hereof by reference.

18. That the Intervenor-Defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18, and, therefore, denies the same.

19. That the allegations of Paragraph 19 relate to the Halifax County Board of Education and this Intervenor-Defendant does not know what alternative methods of pupil assignment are available for this county unit, and, therefore, denies said Paragraph 19.

20. That Intervenor-Defendant does not know what the Halifax County School Administrative Unit has failed and refused to do nor what plan of desegregation it has failed to adopt, and, therefore, denies said paragraph 20.

21. The allegations of Paragraph 21 are untrue and are, therefore, denied.

22. The allegations of Paragraph 22 are untrue and are denied.

WHEREFORE: having fully answered, the Intervenor-Defendant prays the Court:

(a) That Chapter 31 of the Session Laws of 1969, enacted by the General Assembly of North Carolina, be declared to be constitutional and valid.

(b) That this action be dismissed and the Temporary Restraining Order heretofore entered in this cause be dismissed.

(c) That such other and further relief be granted by the Court as may be proper and just.

/s/ Robert Morgan
Attorney General of
North Carolina

/s/ Ralph Moody
Deputy Attorney General of
North Carolina
P. O. Box 629
Justice Building
Raleigh, North Carolina 27602

[Caption Omitted]

ORDER

This cause coming on to be heard before the Court on a motion for a preliminary injunction filed by the plaintiff seeking to restrain the defendants from giving any force or effect to the provision of Chapter 31 of the North Carolina Session Laws of 1969, an Act to establish a separate unit for the operation of the public schools of the town of Scotland Neck, North Carolina and there being also before the Court a motion by the defendant, Halifax County Board of Education, that it be dismissed from that portion of this action dealing with the constitutionality of the Scotland Neck Act as said defendant was not a party to the creation of said Scotland Neck Unit; and it appearing to the Court that said defendant, since it was not a party to the creation of said Act, should not be put to the expense of defending this action in this Court or in any subsequent appeals, if any there be, as said defendant is already before the Court charged with violation of the Civil Rights Act and will be bound by the orders of this Court to comply with all the laws, state and federal, affecting the public schools in Halifax County;

It is therefore, ORDERED, ADJUDGED and DECREED:

THAT the motion of the defendant that it be dismissed from this action is allowed insofar as the question of the constitutionality of the Act creating the Scotland Neck Unit is concerned. Said defendant will no longer be required to defend or appear in subsequent actions involving only the constitutionality of the Act creating said unit, but said defendant is not relieved from the other parts of this action involving its violation of the Civil Rights Act, but shall comply with the orders of this Court, and orders of any Appellate Court or the Supreme Court of the United States of America, as they may effect the operations of the public schools of Halifax County.

THAT this ORDER shall become effective as soon as it is executed by the Court.

Let this ORDER be entered forthwith.

This the 3rd day of November, 1969.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

ALGERNON L. BUTLER
United States District Judge

Raleigh, North Carolina
October ___, 1969

PLAINTIFF'S EXHIBIT #38

Civil Action No. 1128

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANT HALIFAX COUNTY BOARD OF EDUCATION

October 28, 1969

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA

WILSON DIVISION

Civil Action No. 1128

UNITED STATES OF AMERICA, PLAINTIFF,

v.

HALIFAX COUNTY BOARD OF EDUCATION, a body corporate, and the SCOTLAND NECK CITY BOARD OF EDUCATION, a body corporate, DEFENDANTS.

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANT HALIFAX COUNTY BOARD OF EDUCATION

APPENDIX

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1. Please state the name, location, grades served, date of construction and any substantial additions, and attendance zone lines for each school in defendant's school unit for the 1969-70 school year. If there are no present attendance zones, describe the lines for the zones for the last year before they were eliminated, and state what year that was. If possible, please show as much of this information as practicable on a map, such as a general highway map prepared by the North Carolina Highway Department..

1. The names of schools, grades served, date of construction and substantial additions for the schools in Halifax County Unit in the 1969-70 school unit are shown on the attached form. (See attached sheet No. 1). The location of these schools are shown on the attached map (See attached map No. 1).

There were no attendance zones during the 1968-69 school year except for pupils in grades 7 and 8 who were transferred to predominantly white schools as follows:

. Grades 7 and 8 from John A. Chaloner School to William R. Davie School.

. Grades 7 and 8 from McIver School to Aurelian Springs School.

. Grades 7 from Inborden Elementary School to Enfield School.

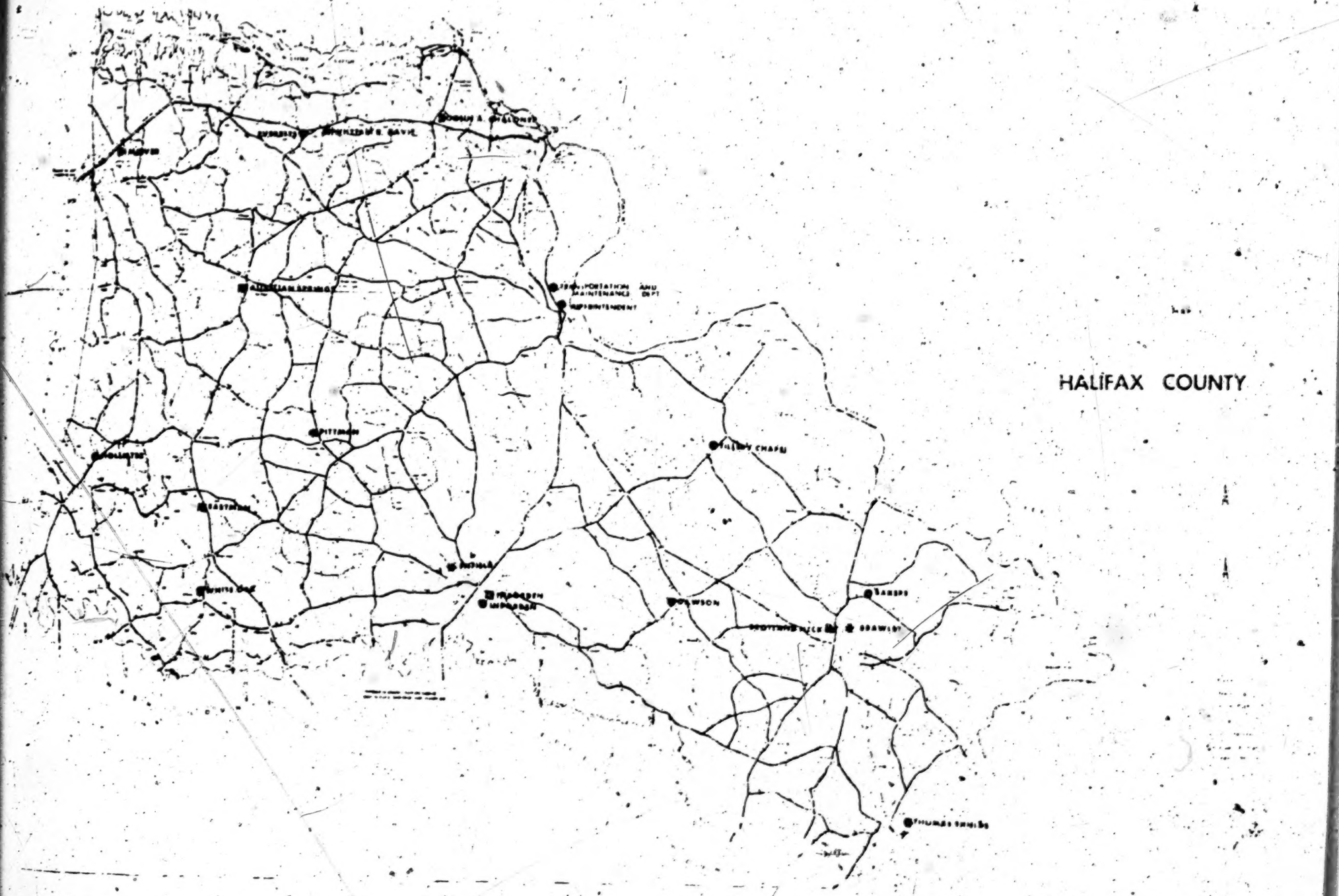
. Grades 7 and 8 from Brawley School to Scotland Neck School.

There are no attendance zones for the 1969-70 school year.

School	Grades Served	Date of Construction	Date of substantial additions
Aurelian Springs Route 2, Littleton, N. C.	1-12	1922—4 classrooms Auditorium	1925—4 classrooms, 1 library 1929—5 classrooms, library 1934—6 classrooms 1935—1 classroom, 1 shop 1948—Gym-Cafeteria 1959—3 classrooms
Bakers Elem. Route 1, Box 103 Scotland Neck, N.C.	1-8	1959—10 classrooms 1 Library	1961—3 classrooms, 1 Cafetorium
Brawley School Scotland Neck North Carolina	1-12	1926—8 classrooms 1 Library	1937—8 classrooms 1942—2 classrooms, 1 shop 1951—5 classrooms, 1 library 1955—5 classrooms 1960—Gymntorium, 4 classrooms 1968—Cafeteria
Dawson Elem. Scotland Neck North Carolina	1-8	1938—4 classroom 1 Music Room	1953—6 classrooms 1960—10 classrooms, 1 library, Cafetorium
Eastman Route 2, Enfield, N.C.	1-12	1947—1 classroom 1 shop	1949—Gymtorium 1953—5 classrooms, 1 library 1956—7 classrooms 1959—13 classrooms, 1 library 1968—Cafetorium
Enfield Graded Enfield, N.C.	1-12	1948—20 classrooms Library Auditorium Cafeteria Gym	1952—1 classroom, 1 shop

School	Grades Served	Date of Construction	Date of substantial additions
Everetts Elem. Route 1, Roanoke Rapids, N.C.	1-8	1958—14 classrooms Library	1960—6 classrooms, Cafetorium
Hollister Elem. Hollister, N.C.	1-8	1960—13 classrooms	1966—Cafetorium, Library
Inborden Elem. Enfield, N.C.	1-8	1948—12 classrooms cafeteria.	1954—2 classrooms 1956—2 classrooms, library 1960—12 classrooms 1969—Cafetorium
Inborden High Enfield, N.C.	9-12	1951—5 classrooms library	1955—3 classrooms, Gymtorium 1961—1 classroom, 1 shop
J. A. Chaloner Roanoke Rapids North Carolina	1-12	1924—5 classrooms library auditorium	1938—4 classrooms 1940—1 classroom, 1 shop 1941—7 classrooms, cafeteria 1942—1 classroom 1944—1 music room 1945—Gymnasium 1950—2 classrooms 1955—6 classrooms 1958—9 classrooms, library
McIver High Littleton, N.C.	1-12	1925—6 classrooms	1930—4 classrooms 1941—band room, 1 classroom, 1 shop 1948—Gymnasium 1954—2 classrooms, library 1959—8 classrooms 1964—6 classrooms 1968—cafetorium

School	Grades Served	Date of Construction	Date of substantial additions
Pittman Elem. Route 3, Enfield, N.C.	1-8	1959—15 classrooms library	1960—cafetorium, 1 classroom
Scotland Neck School Scotland Neck, N.C.	1-12	1903—12 classrooms library	1923—cafeteria, 8 classrooms, library 1939—1 Home Ec. Lab., 2 classrooms, 1 shop, Gymnasium 1949—1 classroom 1954—4 classrooms, auditorium 1960—4 classrooms, cafeteria, library
Thomas Shields Hobgood, N.C.	1-8	1957—6 classrooms	1958—4 classrooms 1961—library, cafetorium
Tillery Chapel Elem. Tillery, N.C.	1-8	1932—4 classrooms	1957—6 classrooms 1962—1 classrooms, library, cafetorium.
White Oak Route 2, Enfield, N.C.	1-8	1959—10 classrooms	1966—1 classroom, library, cafetorium.
Wm. R. Davie Route 1, Roanoke Rapids, N.C.	1-12	1940—11 classrooms 1 library auditorium	1952—4 classrooms, library 1953—1 shop, cafeteria, gymnasium. 1955—5 classrooms 1958—4 classrooms 1961—2 classrooms


HALIFAX COUNTY

2. Please describe any changes in the number, names, locations, grades served or attendance zone lines of the schools in defendant's school unit since the beginning of the 1964-65 school year.

2. Changes in school organization since the beginning of the 1964-65 school term are as follows:

a. John Armstrong Chaloner School formerly in Roanoke Rapids City School Unit, by order of officials of the Civil Rights Division of the U.S. Department of Health, Education and Welfare, by agreement between the Boards of Education of Roanoke Rapids City School Unit and the Halifax County School Unit and by action of the State Board of Education began operating as a part of the Halifax County School Unit at the beginning of the 1966-67 school year. This school had been operating to serve approximately 80% who were living within the Halifax County Unit. Approximately, 190 students or 20% living within the boundaries of Roanoke Rapids City Administrative Unit transferred to other schools in the Roanoke Rapids Unit.

b. Hobgood School, grades 1-8, was closed at the end of the 1966-67 school year. By choice, elementary students have been attending Scotland Neck School from the beginning of the 1967-68 school year. The Scotland Neck School attendance area for grades 1-12 became the same as the attendance area for the grades 9-12. (See map attached, No. 1).

c. Upon closing the high school department of the Haliwa School in Warren County, approximately 70 students in grades 9-12 who live near Hollister in Halifax County transferred to schools in Halifax County at the beginning of the 1967-68 school year. The elementary department of the Haliwa School was closed at the end of the 1968-69 school year and approximately 140 students grades 1-8 who live in Halifax County transferred to schools in Halifax County.

2. (d) Upon closing grades 1-5 of the Littleton School in Warren County at the close of the 1968-69 school term

approximately 60 students who live in Halifax County were transferred to Halifax County Schools. (See attached map No. 1).

3. (a) Please state the enrollment in each school by grade and race for the 1964-65, 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70 school years, and for any other school year in which there was any desegregation of pupils in the system.

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Aurelian Springs

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1	30		20		25		26		25	3	16	(20)
2	21		28		17		28		25		25	(17)1
3	23		23		25	1	16	1	28		19	(21)
4	26		28		20	1	28	1	20		23	(19)
5	31		27		23		21	1	29	1	18	(23)1
6	29		33		23	1	25		19		27	(15)1
7	36		28		30	1	24	1	25	53	18	(12)
8	37		39		26		29	2	22	64	25	(15)
Spec. Ed.												(12)
9	38		46		38	17	31	22	31	23	14	(22)3
10	27		33		42	14	29	17	26	18	29	(14)4
11	33		25		35	11	38	13	31	13	25	(16)3
12	24		30		23	12	26	14	36	10	24	(12)1
TOTAL	365		360		326	58	321	72	317	186	263	232

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Bakers

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		49		42		39		36		27		36
2		44		49		37		42		34		29
3		52		39		41		31		36		39
4		47		41		36		37		29		39
5		45		41		33		39		43		27
6		43		49		41		34		38		45
7		43		47		56		36		33		34
8		42		37		44		49		34		35
Spec. Ed.		18		18		20		15		9		
9												
10												
11												
12												
TOTAL		383		363		347		319		283		284

W=White
NW=Negro or Indian
( )=Indians in Predominantly Negro Schools
Enrollment figures were determined at different times during the school year.
COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Brawley

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		65		61		63		48		60		50
2		67		61		52		50		59		54
3		70		62		54		49		54		53
4		71		66		55		56		49		55
5		72		70		58		55		66		42
6		66		74		75		58		61		52
7		69		68		73		82				48
8		61		68		70		80				56
Spec. Ed.		18		18		18		35		15		
9		221		234		218		232		288		247
10		161		170		192		157		182		184
11		112		111		143		141		154		152
12		104		96		106		108		118		124
TOTAL		1157		1159		1177		1151		1106		1117

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Dawson

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		80		67		66		56		49		39
2		70		74		62		56		51		42
3		72		68		67		54		51		41
4		88		61		60		59		48		48
5		77		75		62		55		59		39
6		62		71		73		60		50		52
7		54		55		66		63		62		48
8		64		49		52		56		63		54
Spec. Ed.				16		14		16		26		27
9												
10												
11												
12												
TOTAL		562		536		522		475		459		390

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Eastman

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		71		61		54		57		50		46
2		63		62		63		50		58		56(1)
3		76		62		53		68		41		48
4		59		63		65		42		65		49(1)
5		74		50		59		55		46		51
6		75		63		54		63		54		46
7		67		69		65		55		59		54
8		54		56		63(7)		64		59		59
Spec. Ed.												42
9		147		138		158(1)		158(3)		167(2)		137
10		113		124		118		139(3)		146		158(1)
11		93		92		104		107		108		122
12		76		88		88		101		97		105
TOTAL		968		928		952		965		952		976

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Enfield Graded

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1	42	3	31	4	26	3	30	6	35	2	15	1
2	43		33	12	29	5	24	7	27	5	20	4
3	42		37	1	33	9	30	7	27	5	18	7
4	44		36		31	4	33	9	31	6	18	6
5	45		42		29	4	37	6	34	10	19	7
6	42		44		37	5	30	5	32	7	28	8
7	35		41		47	4	42	7	31	123	23	20
8	41		37	1	40	2	47	7	47	6	16	17
Spec. Ed.	11		10		11							
9	33		39	8	35	3	40	1	45	5	26	9
10	52	2	28	11	33	6	30	5	31	2	32	7
11	40	1	43	14	28	12	35	7	34	1	17	3
12	37		35	8	40	10	26	10	28	5	24	
TOTAL	505	6	456	59	419	67	404	77	402	177	256	89

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Everetts

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		89		96		76		83		56		57
2		66		78		83		63		66		46
3		86		70		65		77		62		66
4		67		91		58		62		67		56
5		82		69		69		55		57		72
6		70		73		58		61		50		47
7		67		67		64		51		60		50
8		71		70		56		52		36		55
Spec. Ed.						18		16		24		11
9												
10												
11												
12												
TOTAL		598		614		547		520		478		460

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Hobgood

	1964-65		1965-66		1966-67		*1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1	10		13		7							
2	14		8		9							
3	10		16		8							
4	10		6		15							
5	15		15		9							
6	8		15		13							
7	15		10		13							
8	10		12		10							
Spec. Ed.												
9												
10												
11												
12												
TOTAL	92		95		84							

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

*COMMENTS: School closed and pupils attended Scotland Neck School.

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Hollister

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		53		46		38(8)		51		31(5)		45(5)
2		55		42		41(5)		30(3)		42(3)		27(3)
3		44		57		32(5)		44		36(2)		40(4)
4		57		46		59(4)		45(4)		40(4)		44
5		53		56		48(6)		42(5)		37(2)		30(3)
6		44		48		38(6)		53(2)		36(6)		25(7)
7		45		43		41(4)		37(3)		45(2)		35(6)
8		35		39		38(2)		40(2)		36(4)		32(10)
Spec. Ed.												13(2)
9												
10												
11												
12												
TOTAL		386		377		375		361		381		331

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different imes during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Inborden

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		158		152		142		127		136		108
2		161		145		140		127		115		136
3		139		154		138		143		123		98
4		129		137		138		130		146		111
5		168		126		121		139		136		138
6		131		165		136		116		145		131
7		124		123		136		132		15		168
8		99		119		118		137		133		58
Spec. Ed.						18		16				16
9		134		113		158		192		219		213
10		120		95		105		89		114		108
11		80		74		87		80		68		94
12		63		62		67		57		68		52
TOTAL		1506		1465		1504		1485		1418		1431

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: John Armstrong Chaloner

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1						71		64		64		70
2						61		75		61		52
3						76		54		70		57
4						51		75		52		62
5						67		57		74		44
6						59		61		62		59
7						84		73				55
8						64		71				42
Spec. Ed.						18		19		10		16
9						88		91		92		70
10						80		68		74		70
11						62		72		63		59
12						71		57		58		56
TOTAL						852		837		680		712

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: McIver

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		60		63		54		47		51		50
2		53		57		51		53		50		49
3		68		63		48		56		51		53
4		65		53		50		54		47		52
5		70		64		50		50		51		46
6		60		58		58		47		52		54
7		60		59		43		63				64
8		60		49		49		46				43
Spec. Ed.		19		15		15		6		10		15
9		78		93		82		87		89		85
10		101		65		73		76		75		68
11		84		87		52		44		56		61
12		53		74		64		53		40		50
TOTAL		831		800		689		682		572		690

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Pittman

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		80		64		81		74		58		39
2		81		72		51		53		56		47
3		67		73		70		68		53		61
4		74		62		56		50		56		43
5		80		65		62		61		45		52
6		78		75		61		52		57		35
7		68		75		68		59		33		39
8		70		60		69		61		46		35
Spec. Ed.						18		16		16		15
9												
10												
11												
12												
TOTAL		598		547		516		494		420		366

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Scotland Neck

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1	60		59	2	51	1	73	6	68	2	51	3
2	50		62	2	60	1	56	2	67	6	63	3
3	67		58		54	3	59	1	52	2	69	7
4	61		71		51	2	65	4	59	2	48	2
5	67		71		69	3	64	6	76	6	59	8
6	63		71		56	1	73	2	59	3	77	7
7	71		67		69	3	72	1	59	68	61	7
8	72		69		54	3	78	5	63	85	50	13
Spec. Ed.												
9	85		87	1	81	2	64	5	78	4	67	13
10	65		89		76	8	74	4	58	8	76	12
11	71		61	2	76	2	80	7	73	1	58	3
12	65		67	1	56	1	71	3	74	8	62	
TOTAL	797		832	8	753	30	829	46	786	193	741	78

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Thomas Shields

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
												17
1		59		50		29		29		29		26
2		43		43		34		28		21		20
3		36		36		30		32		23		19
4		50		35		35		35		24		20
5		48		45		32		31		24		28
6		41		39		43		28		28		27
7		40		35		31		23		18		19
8		38		29		29		29		20		
Spec. Ed.								16		16		
9												
10												
11												
12												
TOTAL		355		312		263		251		203		176

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at diffecent times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: Tillery Chapel

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		54		49		49		43		28		34
2		35		42		39		41		43		26
3		50		33		40		34		39		38
4		38		47		35		34		34		36
5		43		38		43		29		29		32
6		43		44		39		36		28		30
7		42		42		40		33		39		25
8		35		41		38		24		32		36
Spec. Ed.												
9												
10												
11												
12												
TOTAL		340		386		323		284		272		257

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: White Oak

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1		53		47		49		48		48		50
2		39		46		40		47		41		35
3		47		53		36		35(1)		38(2)	1	36
4		35		39		51		39		31		35
5		59		41		34		45(1)		35		39(1)
6		47		55		46		33		39		39
7		45		34		53		36(2)		24		39(1)
8		28		39		32		45(2)		30		29
Spec. Ed.										16		
9												
10												
11												
12												
TOTAL		353		354		341		334		304	1	304

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Enrollment by Race and Grade for the Following Years

SCHOOL: William R. Davie

	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
GRADE	W	NW	W	NW	W	NW	W	NW	W	NW	W	NW
1	84		96	2	95	5	92	12(1)	79	8	62	16
2	72		88		88	5	77	4	89	10(1)	73	10(1)
3	96		83	2	78	6	86	6(1)	70	5	84	13
4	82		107	2	82	7	71	7	78	7(1)	72	11
5	72		82	2	97	6	78	8	78	10	79	16(1)
6	58		69		72	23	99	6	79	6	70	16
7	76		54	2	73	9	63	22	101	69	65	17
8	73		72	7	58	10	64	15	56	87	88	28
Spec. Ed.	13		14		17		8				5	11
9	72		83	6	78	21	76	13	79	19	64	39
10	71		67	7	72	19	62	20	48	14	54	19
11	68		55	8	50	13	45	14	58	13	41	22
12	46		66		42	7	39	10	37	14	48	12
TOTAL	883		936	38	902	131	860	139	852	264	805	232

W=White

NW=Negro or Indian

( )=Indians in Predominantly Negro Schools

Enrollment figures were determined at different times during the school year.

COMMENTS:

3. (b) Please state the average daily attendance in each school by grade for the year 1968-69 and the first reporting period of 1969-70.

(c) Please state the total expenditure per pupil in each school in the system for each of the years 1964-65 through 1969-70, and state whether said figure is based on enrollment or average daily attendance.

3. (b) Average daily attendance in each school by grade for the year 1968-69 and the first reporting period of 1969-70. (See attached sheets).

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Aurelian Springs

GRADE.	1968-69	First Month 1969-70
1	27	33
2	24	39
3	27	40
4	19	41
5	28	43
6	19	44
7	68	31
8	73	41
Special Education		
9	48	37
10	41	43
11	39	41
12	43	35
Total	456	471

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Bakers Elem.

GRADE	1968-69	First Month 1969-70
1	27	34
2	36	28
3	36	37
4	26	37
5	42	26
6	36	43
7	31	31
8	30	32
Special Education	1	—
9		
10		
11		
12		
Total	265	268

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Brawley

GRADE	1968-69	First Month 1969-70
1	58	25
2	57	26
3	53	26
4	48	25
5	62	21
6	60	29
7	—	30
8	—	25
Special Education	2	8
9	204	118
10	163	88
11	142	73
12	110	57
Total	959	551

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Dawson Elem.

GRADE	1968-69	First Month 1969-70
1	42	37
2	45	40
3	45	38
4	48	45
5	52	35
6	44	46
7	49	43
8	55	48
Special Education	12	14
9		
10		
11		
12		
Total	387	346

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Eastman

GRADE	1968-69	First Month 1969-70
1	47	44
2	53	52
3	38	47
4	59	46
5	40	45
6	49	41
7	53	52
8	49	53
Special Education	—	15
9	140	132
10	122	129
11	93	106
12	89	95
Total	832	857

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Enfield Graded

GRADE	1968-69	First Month 1969-70
1	84	15
2	32	24
3	30	24
4	35	23
5	42	25
6	37	20
7	138	42
8	48	33
Special Education	—	—
9	46	30
10	32	38
11	33	20
12	29	23
Total	536	317

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Everetts Elementary

GRADE	1968-69	First Month 1969-70
1	58	55
2	68	45
3	57	66
4	63	58
5	50	66
6	48	45
7	54	46
8	34	49
Special Education	13	—
9		
10		
11		
12		
Total	435	425

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Hollister Elem.

GRADE	1968-69	First Month 1969-70
1	34	45
2	42	29
3	35	42
4	41	40
5	34	30
6	36	30
7	41	36
8	34	37
Special Education	—	12
9		
10		
11		
12		
Total	297	301

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Inborden Elem.

GRADE	1968-69	First Month 1969-70
1	104	108
2	100	128
3	108	92
4	126	104
5	121	126
6	128	118
7	—	150
8	109	58
Special Education	13	14
9		
10		
11		
12		
Total	829	888

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Inborden High

GRADE	1968-69	First Month 1969-70
1		
2		
3		
4		
5		
6		
7		
8		
Special Education		
9	160	177
10	75	96
11	57	82
12	63	46
Total	355	401

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL John A. Chaloner

GRADE	1968-69	First Month 1969-70
1	66	68
2	59	51
3	69	56
4	49	61
5	69	44
6	58	57
7	—	54
8	—	39
Special Education	13	10
9	80	62
10	66	66
11	57	55
12	56	47
Total	642	670

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL McIver

GRADE	1968-69	First Month 1969-70
1	47	48
2	47	46
3	49	50
4	43	49
5	49	41
6	46	49
7	—	56
8	—	39
Special Education	—	13
9	76	76
10	67	62
11	50	56
12	37	44
Total	511	629

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Pittman Elem.

GRADE	1968-69	First Month 1969-70
1	50	33
2	50	42
3	47	55
4	48	39
5	37	46
6	46	32
7	30	33
8	39	32
Special Education	12	11
9		
10		
11		
12		
Total	359	323

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Scotland Neck

GRADE	1968-69	First Month 1969-70
1	66	53
2	70	66
3	54	74
4	59	49
5	76	63
6	61	81
7	117	65
8	140	64
Special Education		
9	77	75
10	62	84
11	68	60
12	76	60
Total	926	794

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Thomas Shields Elem.

GRADE	1968-69	First Month 1969-70
1	25	17
2	20	25
3	20	20
4	22	20
5	23	20
6	26	27
7	15	27
8	18	18
Special Education	13	
9		
10		
11		
12		
Total	182	174

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL Tillery Chapel Elem.

GRADE	1968-69	First Month 1969-70
1	25	32
2	39	24
3	35	37
4	33	33
5	27	31
6	25	28
7	37	24
8	28	35
Special Education		
9		
10		
11		
12		
Total	249	244

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL White Oak

GRADE	1968-69	First Month 1969-70
1	42	47
2	36	33
3	38	27
4	29	33
5	30	36
6	32	34
7	22	35
8	23	27
Special Education	12	4
9		
10		
11		
12		
Total	264	276

HALIFAX COUNTY SCHOOLS
Halifax, N. C.

Average Daily Attendance by Grade for the Following Years

SCHOOL William R. Davie

GRADE	1968-69	First Month 1969-70
1	79	75
2	96	74
3	77	91
4	86	77
5	86	85
6	81	84
7	159	77
8	137	111
Special Education	—	—
9	88	112
10	56	70
11	64	60
12	48	59
Total	1057	976

(c) Please state the total expenditure per pupil in each school in the system for each of the years 1964-65 through 1969-70, and state whether said figure is based on enrollment or average daily attendance.

3. (c) The total expenditure per pupil in *each school* in Halifax County Unit for each of the years 1964-65 through 1969-70 is not available. There are no records kept of expenditures by school. This task would be impossible. The total expenditures per pupil average daily attendance are as follows:

	State	Federal	Local	Total
1964-65	256.73	11.74	32.69	301.12
1965-66	279.79	30.12	37.43	347.34
1966-67	307.66	97.74	39.29	444.68
1967-68	328.39	121.70	42.58	492.67
1968-69	321.82	120.81	84.02	526.69
1969-70	365.28	111.67	80.45	557.40

Approximated from approval local budgets, estimated Federal ESEA Title I Funds, and estimated State Funds.

3. (d) Please state for each of the school years 1964-65, 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70, the number by race of pupils (I) who reside outside of the defendant's school unit and attended school within the unit, and (II) who reside within the unit and attended school outside the unit. For each such inter-unit transferee, please state the school unit of residence, the school unit of attendance, and, for such transferee during the present year, the school said pupil would attend should the inter-unit transfers cease. Please state a brief summary of any agreement under which inter-unit pupil transfers occur, and the location of any correspondence, notes, minute entries or other writings comprising, or containing information about, said agreements.

3. (d) ANSWER:

Approximate Number of Students Who Reside Outside of the Halifax County School Administrative Unit and Attend School Within the Unit

Year	No. of Pupils by Race	School Unit of Residence	School Attended
1964-65	75 (white)	Roanoke Rapids City	Wm. R. Davie
	40 (Negro)	Martin County	Thomas Shields
	20 (Negro)	Martin County	Brawley
	10 (white)	Martin County	Hobgood
	4 (white)	Martin County	Scotland Neck
1965-66	75 (white)	Roanoke Rapids City	Wm. R. Davie
	30 (Negro)	Martin County	Thomas Shields
	10 (Negro)	Martin County	Brawley
	5 (white)	Martin County	Scotland Neck
1965-66	75 (white)	Roanoke Rapids City	Wm. R. Davie
	10 (Negro)	Martin County	Thomas Shields
	5 (Negro)	Martin County	Brawley
	7 (white)	Martin County	Scotland Neck
1967-68	75 (white)	Roanoke Rapids City	Wm. R. Davie
	10 (Negro)	Martin County	Thomas Shields
	5 (Negro)	Martin County	Brawley
	7 (white)	Martin County	Scotland Neck
1968-69	75 (white)	Roanoke Rapids City	Wm. R. Davie
	10 (Negro)	Martin County	Thomas Shields
	5 (Negro)	Martin County	Brawley
1969-70	75 (white)	Roanoke Rapids City	Wm. R. Davie

3. (d) ANSWER (Continued):

Approximate Number of Students Who Reside Within the Unit but Who Attend School Outside of the Unit

Year	No. of Pupils by Race	School Unit of Residence	School and School Unit Attended
1964-65	220 (Indian)	Halifax County	Haliwa-Warren County
	160 (White)	Halifax County	Littleton-Warren County
	800 (Negro)	Halifax County	Chaloner-Roanoke Rapids City
1965-66	220 (Indian)	Halifax County	Haliwa-Warren County
	155 (White)	Halifax County	Littleton-Warren County
	790 (Negro)	Halifax County	Chaloner-Roanoke Rapids City
1966-67	215 (Indian)	Halifax County	Haliwa-Warren County
	155 (White)	Halifax County	Littleton-Warren County
1967-68	150 (Indian)	Halifax County	Haliwa-Warren County
	150 (White)	Halifax County	Littleton-Warren County
1968-69	140 (Indian)	Halifax County	Haliwa-Warren County
	150 (White)	Halifax County	Littleton-Warren County
1969-70	75 (White)	Halifax County	Littleton-Warren County

If the inter-unit pupil transfer policy would cease the approximately 75 white pupils who live in the Roanoke Rapids City School Unit but are attending school at Davie School in Halifax County would be required to attend a school in the Roanoke Rapids School Unit. The school to which they would be assigned is probably Rosemary School, since this school is the nearest to the residence of most of the elementary pupils.

If the inter-unit pupil transfer policy would cease the approximately 75 white pupils now attending Littleton School in Warren County would be given a choice of attending any school in Hailfax County. It cannot be determined what school in the County they would attend under the free-choice school plan now in operation.

Most of the inter-unit transfers developed historically over a period of years and no records or agreements are available. Records of the closing down of the Haliwa

High School at the close of the 1966-67 school year and the closing down of the Haliwa Elementary School at the close of 1968-69 school year are a part of the records that have been forwarded to the U.S. Department of Health, Education and Welfare. The transfer of Chaloner School from the Roanoke Rapids City Administrative Unit to the Halifax County Unit occurred at the close of the 1965-66 school year and all records of this transfer which enabled students residing in Halifax County to attend a school within the County are a part of the records of the U. S. Department of Health, Education and Welfare.

The students attending Littleton School have historically attended this school (30 years or more) and agreements between the two Boards of Education or school officials are not readily available. In the case of the Martin County students attending the Halifax County Schools, this situation developed because of the proximity of our schools to the Martin County line. The same would be true concerning students attending Littleton School, since the Littleton School is located on the line dividing Warren and Halifax County.

4. (a) Please state the number of regular classrooms in each school, the grades each classroom serves, the capacity of each classroom, and the basis upon which the capacities of the classrooms are determined. State by type the number of classrooms in each school specially adapted or equipped for commercial, scientific and agricultural courses, and the capacity of each of these rooms.

(See attached forms)

4 (a) Attached are floor plans of each school showing the grades or subjects taught and the capacity of each classroom.

The capacity of each classroom is relative to the type of class used in each. The county sets as a maximum the guidelines set up by the North Carolina Department of Public Instruction in its standards for accreditation though the rooms may be able to hold many more students. The primary grades usually hold (30) thirty, the elementary grades contain (35) thirty-five, the high school classes usually have (35) thirty-five in the academic classes and as many as (50) fifty in band or

chorus, physical education, or typing or any other special course.

4. (b) QUESTION:

Please state whether the school unit has used mobile classrooms at any time since the beginning of the 1964-65 school year, and, if so, state the number and capacity of the mobile classroom used at each school for each year since that time.

4. (b) ANSWER:

Mobile units have been used by the Halifax County School System for the purpose of relieving the overcrowded classroom circumstances of many of the schools. These mobile units have been transferred from one school to another and in accordance to their needs.

(Attached is a form showing the location, dates of use and capacity of each mobile unit.)

MOBILE CLASSROOMS USED BY HALIFAX COUNTY SCHOOLS FROM 1964-65—1969-70

Year	1964-65		1965-66		1966-67		1967-68		1968-69		1969-70	
Schools	No.	Capacity of each	No.	Capacity of each	No.	Capacity of each	No.	Capacity of each	No.	Capacity of each	No.	Capacity of each
Aurelian Springs					2	40			2	40	1	40
Bakers												
Brawley	2	40	8	40	10	40	11	40	4	40	9	40
Chaloner					2	40	2	40				
Dawson												
Davie	4	40	7	40	8	40	9	40	14	40	13	40
Eastman	2	40	6	40	9	40	10	40	8	40	12	40
Enfield			8	40								
Everetts												
Holister											1	40
Inborden Elem.	1	40	10	40	13	40	13	40	4	40	6	40
Inborden High									6	40	6	40
McIver			2	40					2	40	1	40
Pittman			1	40	2	40	1	40				
Scotland Neck									9	40		
Shields												
Tillery												
White Oak			2	40					1	40	1	40
Total	9		89		46		46		50		50	

5 (a) Attached is a list of the total number of full-time teachers, by race, at each school in the unit for each school year from 1964-65 to 1969-70.

NUMBER OF FULL TIME TEACHERS

SCHOOL	1964-1965		1965-1966		1966-1967		1967-1968		1968-1969		1969-1970	
	N	W	N	W-I	N	W	N	W	N	W	N	W
Aurelian Springs		16		17		18		17	5	18	4	20
Bakers	12		12		12		12		11	1		
Brawley	39		40		42		43		40			
Chaloner	*		*		34		33		29		29	1
Dawson	15		18		17		16		15	2	15	2
Eastman	31		32		35		33	1	36	2(I)	38	2
Enfield		25		25		25	1	21	4	22	2	20
Everetts	16		21		19		18		19	1	18	1
Hollister	11		11		11		12		12		13	1
Inborden Elem.	30		28		36		35		31		34	1
Inborden High	12		14		14		14		16	1		
McIver	29		28		27		28		26		29	
Pittman	16		17		18		17		17		15	
Scotland Neck		30	1	32	1	32	4	34	10	34	2	33
Thomas Shields	11		10		11		9		9		6	1
Tillery Chapel	9		10		10		10		11		11	1
White Oak	10		11		11		11		12		10	2
Wm. R. Davie		34	1	39	1	42	2	40	9	37	9	34
Hobgood		4		4		4			CLOSED			
TOTAL	241	109	254	117	299	121	299	113	312	118	285	119

* (Chaloner) was in the Roanoke Rapids City Unit during the 1964-65, 1965-66 School Year
I Indian

5 (b) Please state the number of other professional personnel, teachers' aides, par-time teachers, secretaries, cafeteria employees and janitorial personnel by race at each school for each of the school years 1968-69 and 1969-70.

SEE ATTACHMENTS

Question 4

Part (B)

1968-69

School	T. Aides		P. T. Teachers		Janitorial		Secretaries		Cafeteria		Total	
	W	N	W	N	W	N	W	N	W	N	W	N
A. Springs	1		none		1	2	1		7		10	2
Bakers		3	none			2		1		7		13
Brawley		8	none			3		1		10		22
Dawson		5	none			3		1	1	5	1	14
Eastman		7	none			3		1		12		23
Enfield Graded	1	1	none			3	1		1	5	3	9
Everetts		4	none			3		1		5		13
Hollister		3	none			2		1		5		11
Inborden High		2	none			1		1				4
Inborden Elem.		7	none			3		1		11		22
J. A. Chaloner		5	none			3		1		7		16
McIver		5	none			3		1		8		17
Pittman		4	none			2		1		5		12
Scotland Neck	2		1		1	4	1		3	8	8	12
Thomas Shields		3	none			2		1		5		11
Tillery Chapel		3	none			2		1		5		11
White Oak		4	none			2		1		6		13
William R. Davie	1	1	none			3	1		13		15	4
Total	5	65	1		2	46	4	14	25	104	87	229

Question 4 Part (B)

1969-70

School	T. Aides		P. T. Teachers		Janitorial		Secretaries		Cafeteria		Total	
	W	N	W	N	W	N	W	N	W	N	W	N
A. Springs	2		none		1	1	1		7		11	1
Bakers		3	none			2		1		5		11
Brawley		6	none			3		1		11		21
Dawson		4	none			2		1	1	6	1	13
Eastman		6	none			3		1		9		19
Enfield Graded	1	1	none			2	1		1	5	3	8
Everetts		4	none			3		1		5		13
Hollister		3	none			2		1		5		11
Inborden High		1	none			3		1				5
Inborden Elem.		7	none			3		1		12		23
J. A. Chaloner		3	none			3		1		7		14
McIver		3	none			3		1		6		13
Pittman		3	none			2		1		5		11
Scotland Neck			none			4	1		3	6	4	10
Thomas Shields		3	none			2		1		6		12
Tillery Chapel		3	none			2		1		5		11
White Oak		3	none			2		1		6		12
William R. Davie	3	1	none			3	1		11		15	4
Total	6	54	none		1	45	4	14	23	99	34	212

6. Please state the teaching schedule for each member of the faculty at each school for the 1969-70 school year, his race, his certification, and his score on the National Teachers' Examination. This schedule should include the subject and grade taught and the hour of the class. Please state the number of students enrolled and, if possible, the average daily attendance for each class.

(See Portfolio)

7. Please state the number of teachers, by race and by school, who have been newly hired and who have started teaching in the defendant's school unit each of the school years from 1964-65 to 1969-70, the certification of each teacher, and the grade and subject to which each teacher has been assigned. State also the number of teachers, by race and by school, who have left employment, or who have been transferred from one school to another, in the defendant's school unit for each of the above school years. Please describe the manner in which new teachers are employed including full details of the recruiting program and the nature of any authority given to or used by principals, school committees, or others in the hiring process.

(See Portfolio)

8. (a) Please state the name of each teacher and staff member (even though no longer employed by the defendant's school unit) who indicated a willingness to teach or work across racial lines and the steps taken to assign each such teacher across racial lines. Please state what steps, if any, have been taken to encourage teachers and staff members to teach and work across racial lines (including polls), the name of each teacher so encouraged, by whom encouragement was given and the results thereof.

ANSWER: Beginning in the fall of 1964, teachers and other staff members were approached by the Halifax County Central Office Staff and encouraged to teach across racial lines. In 1965 and in at least one succeeding year a survey was conducted to determine the willingness of the teachers to teach across racial lines. Few teachers indicated a willingness to change schools. (Ap-

proximately 6 each year stated they would accept such assignment, but would not volunteer). Both direct and indirect approaches were made to encourage teachers to choose to teach children of a race different from their own.

It is impossible to give the names of the teachers approached or the person whom they were approached by during the past 6 years, since no records were kept of the conversations. Every new teacher employed was asked whether he or she would be willing to accept a teaching assignment in a school of a different race.

The results of the concentrated effort are shown by the steady increase in the number of teachers teaching across racial lines:

Year	Teachers Employed in a School Where Their Race in in Minority.
1964-65	0
1965-66	2
1966-67	4
1967-68	12
1968-69	35
1969-70	23

Halifax County

8. (b) QUESTION:

Please state the number of workshops, meetings, training institutes or similar programs, attended by the school unit's teachers and other professional staff members of both races, and for each such program, its location, the inclusive dates, number of staff members by race in attendance, the topic matter or purpose of such program, and the sponsor(s).

8. (b) ANSWER:

The Halifax County School System has conducted well planned in-service education programs for its professional and non-professional staff. Each program has been developed to increase their understanding of issues and problems of education, to improve their methods of teaching various subjects, and in general, to keep their

thinking and their teaching effective. These programs involved the Negro and Caucasion races. (Please see attached sheets for explanations and descriptions of In-Service Programs).

8. (c) QUESTION:

Please state the number of workshops, meetings, training institutes or like programs for staff personnel, which dealt wholly or in part with desegregation of pupils or faculties, or both, to which the staff members of the school unit were invited or could have attended, and which are not listed elsewhere in your answers to those interrogatories. State for each such meeting the inclusive dates, purpose or topic matter, the number of staff personnel by race who attended and if no staff personnel attended, the reasons why said staff members were not in attendance.

8. (c) ANSWER:

A series of conferences and meetings were conducted during the 1967-68 and 1968-69 school term that dealt in part with the desegregation of pupils in the schools. Representatives from each of the high schools participated in these conferences and the sessions were held on rotation basis, including all of the high schools of the County.

Topics included for discussion were:

1. Better Communication Between Students, Faculty, Parents, and Community
2. Meaningful Relationship with Members of the Opposite Race and
3. Involvement of All Students in School Activities

The number of participants in these conferences varied from one session to another and according to the size of the schools involved. Approximately thirty persons participated in each session with a racial composition of about eighteen (18) Negroes and twelve (12) Caucasions.

Each participant from the schools involved discussed with their local faculty and student body the issues considered in their county-wide meetings.

HALIFAX COUNTY SCHOOLS

WORKSHOPS, MEETINGS, INSTITUTES ATTENDED BY TEACHERS & OTHER PROFESSIONAL STAFF FROM 1964-65 — 1969-70

Titles	Dates	Location	No. Attended *N	No. Attended **C	Sponsor
Techniques of Teaching	June 13, July 1, 1966	Inborden School Enfield	57	10	County ESEA Title I
Improvement in Reading	June 13, July 1, 1966	Inborden School Enfield	76	10	County ESEA Title I
Modern Mathematics	June 13, July 1, 1966	Inborden School Enfield	22	4	County ESEA Title I
Arts, Crafts and Music	June 13, July 1, 1966	Inborden School Enfield	65	5	County ESEA Title I
Audio Visual Aids	June 13, July 1, 1966	Inborden School Enfield	16	9	ESEA Title I
Pupil Evaluation	June 13, July 1, 1966	Inborden School Enfield	10	4	County ESEA Title I

Modern Methods of Teaching	June 13, July 1, 1966	Inborden School Enfield	66	8	County ESEA Title I
Unit Teaching in The Elementary School	Aug. 21-25 1967	Aurelian Springs Sch. Littleton	20	10	County
School Administration of Testing Programs	October 1967	Inborden School Enfield	16	4	ESEA Title I
Teacher Aide Workshop	August 1967	Inborden School Enfield	65	15	ESEA Title I
Music Workshop	October 1967	Inborden School Enfield	22	6	County ESEA Title I
Study of the Disadvantaged Child	October 1967	Inborden School Enfield	40	2	ESEA Title I
Reading in The Junior High School	October 1967	Inborden School Enfield	18	7	ESEA Title I
Problems in Educational Administration	October 1967	Inborden School Enfield	18	7	County ESEA Title I

HALIFAX COUNTY SCHOOLS

WORKSHOPS, MEETINGS, INSTITUTES ATTENDED BY TEACHERS & OTHER PROFESSIONAL STAFF FROM 1964-65 — 1969-70

Titles	Dates	Location	No. Attended *N	No. Attended **C	Sponsor
Techniques of Teaching	October 1967	Inborden School Enfield	26	5	County ESEA Title I
New Ideas in Teaching High School Science	April 1968	Inborden School Enfield	12	8	County ESEA Title I
Mental Hygiene in the School	April 1968	Inborden School Enfield	27	4	County ESEA Title I
Elementary Science Workshop	April 1968	Inborden School Enfield	17	0	County ESEA Title I
Home-Community Relations	April 1968	Inborden School Enfield	54	26	County ESEA Title I

Modern Math for Elementary Teachers	April 1968	Inborden School Enfield	18	7	County ESEA Title I
Teacher-Teacher Aide Workshop	June 1968 Aug. 1968	Dawson School Scotland Neck	75	18	ESEA Title I
Personality Development, Behavior Disorders, Therapeutic Measures, and Intergroup Conflict Resolutions	Sept. 17, 1968 April 15, 1969	Dawson & Pittman Schools	115	27	County ESEA Title I
Communications and A. V. Materials and Equipment	March 1- April 12, 1967	Dawson & Aurelian Springs Schools	12	5	County ESEA Title I
Desegregation Workshop	Nov.-Dec., 1968 July-Aug., 1969	Eastman Aurelian Springs Davie Brawley Enfield Graded Raleigh	98	72	County, ESEA Title I Edu. Leadership Center

* Negro

** Caucasian

9. (a&b) Please state the bus number, the length of the route, and the race of the driver of each school bus serving each school in the district during the 1969-70 school year, and the number of students of each race riding each bus. Please attach a description of the route of each bus and, if possible, a map or maps showing the routes of all the school buses in the district. Please state how many miles of each school bus route coincide with the route of a bus serving a school attended predominantly by students of the opposite race.

Since the Halifax County School system is not fully integrated, we operate a partial dual transportation system. This means that in the majority of the cases a separate transportation system is provided for negro and white students. However, this does not always apply because a student has the right to ride any bus that will transport him to the school of his choice. Therefore, the same percentage of integration exist in the transportation system as exist in the Halifax County School Administrative Unit.

The school bus drivers are selected from the schools that they attend. In most instances this would mean that negro drivers would be driving buses to negro schools and white drivers to predominately white schools. However, exceptions exist on this point because some negroes that attend predominately white schools have been selected as drivers without discrimination.

9. (c) Please state whether there is any residential segregation by race in the school unit. Please identify and give a general description of any areas in the unit which are wholly or predominantly uniracial. If pupils now in the system are assigned to existing schools on a unitary geographic basis, and disregarding any possible withdrawal of white pupils as a result of integration, would the pupil population of any school be wholly or substantially uniracial?

Yes, residential segregation does exist in the Halifax County Administrative Unit. In the rural areas of Halifax County two of the three races of people are dispersed throughout most of the county. The Haliwa Indians, the

third race of people living in Halifax County, reside predominantly in the Hollister section. The only areas of the County which has residential segregation would be areas in and around Roanoke Rapids, Enfield and Scotland Neck which does have sections of all white and all negro residents.

In answer to the question of whether a school would remain wholly or substantially uniracial, the reply is yes. This is true because certain sections of the county are so heavily negro populated that any system of education that we have devised would not bring about integration in these areas. This statement may sound contridictory to previous statements about racial dispersement in the rural areas, however this can be explained by the high percentage of negro residents living in Halifax County.

9. (d) Please state the schools of any other administrative unit served by buses or drivers of the defendant, the number of each such bus, the number of pupils by race transported to or from each such school, and a brief summary of any agreements, resolutions or minutes under which said service is provided. Please state the name, address and any official positions of persons known to you who have information about this arrangement.

The fourteen school buses that serve the Weldon Administrative Unit are titled to the Halifax County Board of Education. This was done on the recommendation of the North Carolina State Board of Education. The Halifax County Maintenance Department provides maintenance and fuel to these buses but exercises no control over their operation.

10. Please state what courses are currently taught at each school, and what courses are proposed to be taught for the 1970-71 school year. If any of the courses are not given evey year or are given only one semester each year, please indicate that fact.

(See Portfolio)

11. Please state what organized athletic programs, bands, or other extracurricular activities under school auspices are operated at each school, and the number of students, by race, participating in each sport or activity at each school.

To answer this question, I refer you to the following sheets which include all the School's Athletic schedules, the number of players envolved and their racial composition; bands and their composition by race; and, all the clubs at each school and their composition by race.

WILLIAM R. DAVIE SCHOOL

Route 1, Box 191

Roanoke Rapids, N.C. 27870

1969-1970 Football Schedule

Date	Opponent	Home	Away
Sept. 5	Norlina		X
Sept. 12	Wakelon		X
Sept. 19	Warrenton	X	
Sept. 26	Gaston	X	
Oct. 3	Weldon	X	
Oct. 10	Littleton		X
Oct. 17	Oxford Orphanage	X	
Oct. 24	Murfreesboro		X
Oct. 31	(Open)		
Nov. 7	Louisburg		X

WILLIAM R. DAVIE

1969-70 Basketball Schedule

Friday, December 5	(Open)
Tuesday, December 9	Gaston
Friday, December 12	Aurelian Springs
Tuesday, December 16	Warrenton
Friday, December 19	Norlina
Friday, January 2	Enfield
Tuesday, January 6	Murfreesboro
Friday, January 9	Littleton
Tuesday, January 13	Weldon
Friday, January 16	(Open)
Tuesday, January 20	Gaston
Friday, January 23	Aurelian Springs
Tuesday, January 27	Warrenton
Friday, January 30	Norlina
Tuesday, February 3	Enfield
Friday, February 6	Murfreesboro
Tuesday, February 10	Littleton
Friday, February 13	Weldon

HALIFAX COUNTY SCHOOLS

W. Henry Overman, Superintendent
Halifax, N. C. 27839

Board of Education

C. M. Moore, Jr., Chm.
Mrs. J. C. Shearin
W. Carlos Burt

Board of Education

C. H. Leggett
Mrs. A. L. Williams
A. G. Wilcox, Jr.
J. I. Walston, Jr.

WILLIAM R. DAVIE SCHOOL

Activity	White	Negro	Total
Football	19	10	29
Basketball (boys)	9	5	14
Basketball (girls)	9	3	12
Monogram Club	20	5	25
Future Homemakers of America	18	13	31
Science Club	11	3	14
Future Farmers of America	61	14	75
Library Club	22	3	25
Student Council	20	8	28
Future Teachers of America	23	10	33
Beta Club	11	1	12

JOHN A. CHALONER SCHOOL

Roanoke Rapids, North Carolina 27870

BASKETBALL SCHEDULE
for
1969-1970

Date	Opponent	Location
November 7, '69	Phillips	Battlesboro, N. C.
November 11	McIver	Roanoke Rapids, N. C.
November 18	Inborden	Roanoke Rapids, N. C.
November 21	Phillips	Roanoke Rapids, N. C.
November 25	Eastman	Enfield, N. C.
December 2	Inborden	Enfield, N. C.
December 5	W. S. Creecy	Roanoke Rapids, N. C.
December 9	C. S. Brown	Winton, N. C.
December 12	Perquimans	Winfall, N. C.
December 16	Gumberry	Roanoke Rapids, N. C.
December 19	Henderson Institute	Henderson, N. C.
January 2, '70	C. S. Brown	Roanoke Rapids, N. C.
January 6	McIver	Littleton, N. C.
January 9	Henderson Institute	Roanoke Rapids, N. C.
January 13	Eastman	Roanoke Rapids, N. C.
January 16	Swift Creek	Red Oak, N. C.
January 20	Swift Creek	Roanoke Rapids, N. C.
January 23	Perquimans	Roanoke Rapids, N. C.
January 27	R. L. Vann	Ahoskie, N. C.
January 30	Brawley	Scotland Neck, N. C.
February 3	R. L. Vann	Roanoke Rapids, N. C.
February 6	Gumberry	Gumberry, N. C.
February 10	Brawley	Roanoke Rapids, N. C.
*February 13	W. S. Creecy	Rich Square, N. C.

* Subject to change

All home games will begin at 7:30 p.m.

HALIFAX COUNTY SCHOOLS

W. Henry Overman, Superintendent
Halifax, N. C. 27839

Board of Education

C. M. Moore, Jr., Chm.
Mrs. J. C. Shearin
W. Carlos Burt

Board of Education

C. H. Leggett
Mrs. A. L. Williams
A. G. Wilcox, Jr.
J. I. Walston, Jr.

JOHN A. CHALONER

Activity	Negro Students
Future Farmers of America	40
Future Homemakers	40
Glee Club	22
Science Club	15
School Patrol	20
Basketball	30
Student Government	30
Introduction of Vocation	65

* Please note all participants and negro

McIVER HIGH SCHOOL

A. Farmer, Principal

Littleton, North Carolina

27850

McIVER SCHOOL

Clubs		Athletics	
Journalism Club	28	Boys Basketball	22
FFA	100	Girls Basketball	17
FHA	72	Cheerleader	6
Student Gov't	18		

* Please note that all of these participants are negro.

McIVER BASKETBALL SCHEDULE

1969	November 4	Oak City	Boys and Jayvee	Home	Tuesday
	November 7	Oak City	Boys and Jayvee	Away	Friday
	November 11	Chaloner	Boys and Girls	Away	Tuesday
	November 14	Eastman	Boys and Girls	Home	Friday
	November 25	Swift Creek	Boys and Jayvee	Away	Tuesday
	December 5	Inborden	Boys and Girls	Home	Friday
	December 9	Swift Creek	Boys and Jayvee	Home	Tuesday
	December 12	Speight	Boys and Jayvee	Away	Friday
1970	January 6	Chaloner	Boys and Girls	Home	Tuesday
	January 16	Inborden	Boys and Girls	Away	Friday
	January 23	Speight	Boys and Jayvee	Home	Friday
	February 6	Eastman	Boys and Girls	Away	Friday
	February 17	Tournament	Boys and Girls	Away	Tournament
	February 18	Tournament	Boys and Girls	Away	Tournament

BRAWLEY HIGH SCHOOL

Working Organizations

October 23, 1969

Organizations	No. Enrolled
Student Council Officers and Representatives	45
Library Club	15
Honor Society	11
F. F. A.	41
F. H. A.	20
Football Team (Travel Team)	28
Basketball (Boys)	Not Selected Yet 38
Basketball (Girls)	Not Selected Yet 26
Girl Scouts	43 (Elem.)
Boy Scouts	25

* Please note that all of these participants are negro.

/s/ J. C. Bias

BRAWLEY HIGH SCHOOL

Football Schedule 1969-70

September	13	C. S. Brown at Ahoskie
	18	Windfall at Scotland Neck
	26	R. L. Vann at Ahoskie
October	3	South Ayden at Scotland Neck
	10	Open Date
	17	W. S. Creecy at Scotland Neck (Homecoming)
	25	W. S. Creecy at Rich Square
	31	Patillo at Scotland Neck
November	7	Henderson Institute at Scotland Neck

/s/ J. C. Bias

BRAWLEY HIGH SCHOOL

Basketball Schedule

1969-70

December	2	W. S. Creecy at Rich Square
	5	Gumberry at Gaston
	9	R. L. Vann at Scotland Neck
	12	C. S. Brown at Scotland Neck
	16	West Martin at Oak City
	19	Eastman at Scotland Neck
	30	Inborden at Scotland Neck
January	2	R. L. Vann at Ahoskie
	6	W. S. Creecy at Scotland Neck
	9	Open
	13	Perquimans County at Winfall
	16	West Waring at Scotland Neck
	20	C. S. Brown at Hinton
	23	Open
	27	Eastman at Enfield
	30	J. A. Chaloner at Scotland Neck
February	3	Gumberry at Scotland Neck
	6	Perquimans County at Scotland Neck
	10	J. A. Chaloner at Roanoke Rapids
	13	Inborden at Enfield
	17	

/s/ J. C. Bias

HALIFAX COUNTY SCHOOLS

W. Henry Overman, Superintendent
Halifax, N. C. 27839

Board of Education

C. M. Moore, Jr., Chm.
Mrs. J. C. Shearin
W. Carlos Burt

Board of Education

C. H. Leggett
Mrs. A. L. Williams
A. G. Wilcox, Jr.
J. I. Walston, Jr.

AURELIAN SPRINGS HIGH SCHOOL

Activity	White	Negro	Indian	Total
Chorus	55		20	75
Student Government	17		4	21
Beta Club	12		4	16
Yearbook	10		5	15
Future Farmers of America	41	3	23	67
Future Homemakers of America	48	5	23	76
Cheerleaders	10		1	11
Monogram	70			70
Pep Club	53		5	58

Athletic squads and schedule not complete.

HALIFAX COUNTY SCHOOLS

W. Henry Overman, Superintendent
Halifax, N. C. 27839

Board of Education

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INBORDEN HIGH SCHOOL

Activity	Students
Basketball	45
Monogram Club	45
National Honor Society	10
Future Farmers of America	133
Future Homemakers of America	101
Journalism	9
Student Government	22
Science Club	31
French Club	12

* Please note all participants are negro.

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T. S. INBORDEN SCHOOLS
P. O. Box 457
Enfield, North Carolina 27823

L. M. WILLIAMS
ELEMENTARY PRINCIPAL
TELEPHONE 445-3525

C. WILLIAMSON
HIGH SCHOOL PRINCIPAL
TELEPHONE 445-5400

October 20, 1969

INBORDEN HIGH SCHOOL

Basketball Schedule

Dates	Teams	Sites	Players
November			
4	Carver (Pinetop)	Home	Varsity and Jr. V.
7	OPEN		
11	Swift Creek (Whitakers)	Away	Varsity & Jr. V.
13	Conetoe (Conetoe)	Away	Varsity & Jr. V.
14	West Martin (Oak City)	Home	Varsity & Jr. V.
18	Chaloner (Roanoke Rapids)	Away	Varsity & Girls
21	Gumberry (Gumberry)	Home	Varsity & Girls

December			
2	Chaloner (Roanoke Rapids)	Home	Varsity & Girls
5	McIver (Littleton)	Away	Varsity & Girls
6	Speight (Wilson)	Home	Varsity & Jr. V.
9	Speight (Wilson)	Away	Varsity & Jr. V.
12	Conetoe (Conetoe)	Home	Varsity & Jr. V.
16	Eastman (Enfield)	Away	Varsity & Girls
19	Gumberry (Gumberry)	Away	Varsity & Girls
30	Brawley (Scotland Neck)	Away	Varsity & Girls
January			
6	West Martin (Oak City)	Away	Varsity & Jr. V.
9	Eastman (Enfield)	Home	Varsity & Girls
13	Pattillo (Tarboro)	Home	Varsity & Jr. V.
15	Carver (Pinetop)	Away	Varsity & Jr. V.
16	McIver (Littleton)	Home	Varsity & Girls
24	Pattillo (Tarboro)	Away	Varsity & Jr. V.
27	Phillips (Battleboro)	Away	Varsity & Jr. V.
30	Springfield	Home	Varsity & Girls
February			
3	Swift Creek (Whitakers)	Home	Varsity & Girls
6	Springfield	Away	Varsity & Girls
10	Phillips (Battleboro)	Home	Varsity & Jr. V.
13	Brawley (Scotland Neck)	Home	Varsity & Girls

HALIFAX COUNTY SCHOOLS

W. Henry Overman, Superintendent
Halifax, N. C. 27839

Board of Education	Board of Education
C. M. Moore, Jr., Chm.	C. H. Leggett
Mrs. J. C. Shearin	Mrs. A. L. Williams
W. Carlos Burt	A. G. Wilcox, Jr.
	J. I. Walston, Jr.

EASTMAN HIGH SCHOOL

Activity	Negro	Activity	Negro
Band	70	Future Bus Leaders	35
Choir	79	Vocational Club	73
Student Government	30	Cheerleaders	18
Crown and Scepture Club	40	Girls Athletic Association	24
Social Science	50	French	30
Library Club	30	Patrol	70
Student Handbook	30	Commercial	35
Dramatics	30	Band Boosters	42
Debating	30	Athletic Boosters Club	45
Future Farmers of America	124	Charm and Culture Club	20
Future Homemakers of America	90	Bus Drivers	20
Math	40	English Club	50
		Science	50

EASTMAN HIGH SCHOOL

BASKETBALL GAMES

FOR

1969-70

School	Date	Where
1. Swift Creek	Nov. 4, 1969	Here
2. Springfield	Nov. 7, 1969	There
3. Speight	Nov. 11, 1969	There
4. McIver	Nov. 14, 1969	There
5. Open	Nov. 18, 1969	
6. Springfield	Nov. 21, 1969	Here
7. Chaloner	Nov. 25, 1969	Here
8. West Martin	Nov. 26, 1969	Here
9. Open	Dec. 2, 1969	
10. Canetoe	Dec. 5, 1969	There
11. Pattillo	Dec. 9, 1969	There
12. G. W. Carver	Dec. 12, 1969	Here
13. T. S. Inborden	Dec. 16, 1969	Here
14. Brawley	Dec. 19, 1969	There
15. Chaloner	Dec. 31, 1969	There
16. Canetoe	Jan. 2, 1970	Here
17. G. W. Carver	Jan. 6, 1970	Here
18. T. S. Inborden	Jan. 9, 1970	There
19. Open	Jan. 13, 1970	
20. Pattillo	Jan. 16, 1970	Here
21. Open	Jan. 20, 1970	
22. Phillips	Jan. 23, 1970	There
23. Brawley	Jan. 27, 1970	Here
24. Phillips	Jan. 30, 1970	Here
25. West Martin	Feb. 3, 1970	There
26. McIver	Feb. 6, 1970	Here
27. Speight	Feb. 10, 1970	There
28. Swift Creek	Feb. 13, 1970	There

HALIFAX COUNTY SCHOOLS

W. Henry Overman, Superintendent
Halifax, N. C. 27839

Board of Education

C. M. Moore, Jr., Chm.
Mrs. J. C. Shearin
W. Carlos Burt

Board of Education

C. H. Leggett
Mrs. A. L. Williams
A. G. Wilcox, Jr.
J. I. Walston, Jr.

SCOTLAND NECK SCHOOL

ACTIVITY	NEGRO	WHITE	TOTAL
Football	4	22	26
Basketball	7	20	27
Bus Drivers		14	14
Cheerleaders		9	9
Jr. Varsity Cheerleaders	1	8	9
Scotsman Staff		15	15
Beta		12	12
Jr. Varsity Football	9	13	22
Monogram	4	45	49
Jr. Varsity Basketball	7	8	15
Pep Club	5	45	50
Bagpipers		12	12
Baseball	4	15	19
Track	8	16	24
Golf		7	7
Student Government	5	15	20

SCOTLAND NECK

1969-70 Football Schedule

August 29	Murfreesboro
September 5	Northampton
September 12	Williamston
September 19	Wakelon
September 26	Edenton
October 8	Gates County
October 10	Ahoskie
October 17	Louisburg
October 24	Plymouth
October 31	Hertford

SCOTLAND NECK

1969-70 Basketball Schedule

December 2	Enfield
December 5	William H. Davie
December 12	Tarboro
December 16	Enfield
December 26-27	Holiday Festival
January 6	Ahoskie
January 9	Gates County
January 13	Edenton
January 16	Plymouth
January 20	Perquimans
January 23	Williamston
January 27	Northampton
January 30	Ahoskie
February 3	Gates County
February 6	Edenton
February 10	Plymouth
February 13	Perquimans
February 17	Williamston
February 20	Northhampton
February 24-27	Conference Tournament

TENTATIVE

SCOTLAND NECK SCHOOL
GOLF SCHEDULE

1969

7 White

March 17	at Plymouth
March 24	at Scotland Neck
March 31	at Williamston
April 10	at Ahoskie (No match Easter Monday—Play on Thursday)
April 14	at Bertie
April 21	at Edenton
April 28	at Scotland Neck—Tournament
Sectionals	May 5

TRACK SCHEDULE

1969

March 26	Scotland Neck and Gates at Northhampton
April 2	Plymouth, Pasquotank and Scotland Neck at Ahoskie
April 9	Williamston and Hartford at Scotland Neck
April 16	Northampton, Plymouth and Scotland Neck at Edenton
April 23	Plymouth and Scotland Neck at Bertie

Estimated

16 Whites
8 Colored

11. (a) Have Negro pupils at desegregated schools ever been denied permission to participate in any athletic or extracurricular activity, because they have not been enrolled at such schools long enough, or for any other reason? Please provide details.

In answer to the question of whether any negro has been deprived of participation in athletic contest or extracurricular activities in a desegregated school, the answer is no. In fact, they have been encouraged to do so.

11. (b) Please state for each organized sport the schools scheduled for play during 1969-70, and indicate whether each such scheduled school is historically white or historically negro. Please state the dates of all openings in athletic schedules which have not been filled to date. For any sport in your unit which is not scheduled for at least one-third of the games with teams historically of the opposite race, please indicate the reason why a greater proportion of games with teams of the opposite race cannot be scheduled.

The High School athletic schedules in Halifax County are scheduled in most cases within the Athletic Conference that a particular school is a member of. This means that negro schools have schedules with historically negro schools and predominately white schools with historically white schools.

The reason that open dates in the schedules cannot be scheduled with teams of the opposite race is because the conference controls the schedule.

12. Please state how the expenses of operating the programs named in answer to Question 11 are met, and how and by whom uniforms and equipment are paid for.

ANSWER: All programs named in Question 11 are operated with money raised in one or more of the following ways:

a. Pupil membership dues;
b. Gate receipts at athletic contests;
c. Fund-raising events such as "Fall Festivals";
d. Other student sponsored fund-raising activities such as magazine or picture sales;
e. Donations by community athletic "booster clubs".

In none of the extra-curricular activities or athletic contests have County, State or Federal tax funds been used to pay the expense of operating any of the programs.

13. Please state whether each school in the defendant's school unit has a library, and how many books are in each library. If a library is in a school which has both elementary and high school students, the total number of books in the library, the number appropriate for use by elementary school students and the number appropriate for use by high school students. If contributions of library books have been made by private individuals or groups, please furnish details as to the date, amount, and recipient school with respect to each such contribution.

SEE ATTACHMENT

Question 13

All eighteen (18) schools in the Halifax County School Administrative Unit have a library. Listed below are the schools, their organizational pattern, and the number of books in the high school library (grades 9-12), and the number of books in the elementary library (grades 1-8). These figures were taken from each principal's annual report that was submitted to the N. C. Department of Public Instruction in May of 1969.

The Central Administrative Office does not have any records to indicate that any private individual or group have made any contribution of library books to any school library in the Halifax County Administrative Unit.

School	Organizational Pattern	Number Books Elementary Library	Number Books High School Library	Total Library Books
Aurelian Springs	1-12	2,256	1,824	4,080
Bakers	1-8	2,746		2,746
Brawley	1-12	4,097	4,694	8,791
Dawson	1-8	3,923		3,923
Eastman	1-12	4,338	3,554	7,892
Enfield Graded	1-12	2,467	2,800	5,267
Everetts	1-8	5,383		5,383
Hollister	1-8	4,250		4,250
Inborden High	9-12		3,876	3,876
Inborden Elementary	1-8	6,330		6,330
John A. Chaloner	1-12	6,197	3,264	9,461
McIver	1-12	2,956	3,935	6,891
Pittman	1-8	3,976		3,976
Scotland Neck	1-12	5,643	3,252	8,895
Thomas Shields	1-8	2,861		2,861
Tillery Chapel	1-8	3,117		3,117
White Oak	1-8	2,915		2,915
William R. Davie	1-12	6,345	3,218	9,563
Total		69,800	30,417	100,217

14. Please state which schools in the unit are accredited, and the year in which they were first accredited, by:

(a) The North Carolina Department of Public Instruction; and

(b) The Southern Association of Colleges and Schools.

SCHOOL ACCREDITATION FOR HALIFAX COUNTY

SCHOOLS	Year First Accredited By N. C. Dept. of Pub. Inst. ELEM.	HIGH SCHOOL
Aurelian Springs	1955	1926
Bakers	1968	——
Brawley	1968*	1936
Chaloner	1934	
Dawson	1962	——
Eastman	1968*	1931
Enfield	1939	1920
Everetts		——
Hollister	1968	——
Inborden		1954
McIver	1968*	1941
Pittman	1968	——
Scotland Neck	1950	1920
Thomas Shields	1967	——
Tillery Chapel	1968	——
White Oak	1968	——
William R. Davie	1954	1941

* Provisionally Accredited

Presently Halifax County has no schools accredited by The Southern Association of College and Schools—

15. Please state when the school unit first officially adopted a freedom of choice plan of student assignment. Please state what steps, if any, the school unit took to disestablish its dual system of schools prior to the adoption of the freedom of choice plan indicated above. Please state whether and when consideration was first given to adoption of a unitary zoning or pairing plan as distinguished from a freedom of choice plan, and indicate, so far as possible, what educational or other considerations led to the adoption of a freedom of choice plan.

15. Freedom of choice plan of student assignment for all pupils in all grades was first officially adopted by the Halifax County Unit on August 18, 1965, and became effective for the 1965-66 school year.

The first step to disestablish the dual system of schools took place on August 3, 1965. (See answer to question 16 and attached excerpts from Minutes of the meeting of Halifax County Board of Education held on August 17, 1964).

Consideration was given to adoption of a unitary zoning and pairing plan as distinguished from a freedom of choice form on August, 1968 after the U. S. Department of Justice had declared that the operation of schools on a freedom of choice plan had not resulted in the disestablishment of a dual system of schools. (See answer to question 22, page 166).

It was considered at the time that freedom of choice was first adopted that this method would comply with the 1964 Civil Rights laws, would bring about a more orderly transition to a unitary school system.

16. Please state (a) when the first Negro student applied to attend an all-white school in your unit; and (b) when the first Negro student was admitted to a formerly all-white school and the number of Negro students who applied and the number who were admitted to formerly all-white schools at that time.

16. (a) The first Negro student applied to attend an all-white school in Halifax County Schools on June 3, 1964.

(b) The first Negro student was admitted to a formerly all-white school at the beginning of the 1964-65 school year. Seventeen Negro students made application to a formerly all-white school, Enfield School, during the summer of 1964. Three students withdrew their applications before action was taken by the Halifax County Board of Education. Six students were assigned and the applications of eight students were disapproved in accordance with the Policy adopted by Board of Education. All six students who applied in grades 1, 10, 11 and 12 were assigned. Applications of eight students in grades 4, 5, 8 and 9 were not approved. (See excerpts from minutes of Halifax County Board of Education, August 17, 1964.)

Excerpts From Minutes of the Meeting of the Halifax County Board of Education Held on August 17, 1964.

"The following resolution was offered by C. H. Leggett, seconded by J. D. Whitehead and passed:

WHEREAS, the Halifax County Board of Education has received a number of Applications for Change of Pupil Assignment from Inborden School to Enfield Graded School; and

WHEREAS, the Board had given full consideration to each Application for Change of Assignment; and

WHEREAS, the Board desired and sought to adopt an orderly plan of reassignment that would be for the best interest and general welfare of each pupil; and

WHEREAS, the Board at its last regular meeting held on August 3, 1964, pursuant to a verbal agreement adopted at said meeting and upon Application for Change of Assignment made by their parents did reassign to the Enfield Graded School pupils in Grades 1, 10, 11, and 12, who had been assigned to Inborden School; and

WHEREAS, the Board desires to enter into its minutes the plan verbally adopted at the meeting held on August 3, 1964. Now therefore, be it

RESOLVED, that the Halifax County Board of Education adopt as a plan for the 1964-65 school term the consideration of all Applications for Change of Pupil Assignment for pupils in grades 1, 10, 11, and 12, provided the legal residence of said pupils is within the attendance area of the school for which assignment is requested and, provided further that said Application for Change of Assignment have been submitted to and received by the Halifax County Board of Education in accordance with "Rules and Regulations Governing Assignment and Enrollment of Pupils", adopted on May 4, 1956, and amended on May 7, 1957; and be it further

RESOLVED, that should this plan prove feasible the Board of Education shall give consideration to the addition of one or more grades to the plan during the 1965-66 school term and other grades during subsequent school terms."

17. Please state whether any white students in the school uint have attended or are currently attending a formerly all-Negro school, and, if so, how many, when, and at which school or schools.

ANSWER: To the best of our knowledge one white student is attending a formerly all-Negro school. The student is in grade four at White Oak School.

18. Please describe any increase or decrease in the geographic area within the jurisdiction of the defendant's school unit from 1964 to the present, except the changes brought about under authority of Chapter 31, 1969 Sessions Laws. For each such change give the other person, governmental unit, or school administrative unit involved, the schools or other properties involved, the location, amount of acreage, number of classrooms, number of each type of non-classroom structures, number of pupils by race, number of teachers by race, and amount of funds transferred. Please indicate with respect to your answers to the aforesaid question the school administrative unit(s) from which transferred, and the school administrative unit(s) to which transferred. Please state a brief summary description of leases, agreements, cor-

respondence, notes, minutes and other writings relating to or containing such changes, and the name, address and any official position of persons known to be in possession, custody or control of such writings. Please state the name, address and any official position of any person not an employeed of the defendant, known to you who possesses information about any increase or decrease in the geographic area of the defendant's jurisdiction from 1954 to the present.

18. Decrease and increase in the geographic area within jurisdiction of the Halifax County School Unit are as follows:

(a) All area consisting of the town of Halifax and surrounding territory was transferred from the Halifax County Administrative Unit and annexed to the Weldon City Administrative Unit at the beginning operation in the Weldon City Administrative Unit. The schools, land and buildings located in this area were transferred by a favorable vote of the qualified voters within the annexed area by an election held on June 23, 1956.

School	Location	Acres	Class-Rooms	Other Structures	Students	Teachers	Funds Transferred
Halifax Elem.	Halifax	6	4	Auditorium & Lunchroom	74 W	3 W	None
Andrew Jackson	Halifax	1	4	None	183 N	4 N	None
Pea Hill	Near Halifax	3½	4	None	145 N	4 N	None
Allen Grove	Near Halifax	2	3	None	46 N	4 N	None

(b) The school site consisting of 10 acres adjacent to the Halifax County School Unit was transferred from the Roanoke Rapids City Unit and annexed to the Halifax County Unit by the State Board of Education upon joint request and agreement betwen the Boards of Education of Roanoke Rapids City Unit and Halifax County Unit on July 1, 1966.

The John Armstrong Chaloner School, located in Roanoke Rapids was the only school in this area. The land, building and contents were transferred by Lease Agreement between the two Boards of Education. (See Lease Agreement and refer to answer to Question 2). There are 37 classrooms, gymnasium, auditorium and a residence occupied by a member of the school faculty. Seven hundred ninety (790) students and thirty-six (36) Negro teachers were transferred.

Upon agreement by the Roanoke Rapids Board of Education and the Halifax County Board of Education, the State Board of Education transferred the sum of $70,150.70 from State Schools Facilities Fund from the Roanoke Rapids City Unit to the Halifax County Board of Education.

The lease agreements, correspondence, notes, minutes, and other writings relating to these charges are in possession of W. Henry Overman, Superintendent, Halifax County Schools, and Dr. A. Craig Phillips, State Superintendent of Public Instruction and Secretary of the State Board of Education.

NORTH CAROLINA

HALIFAX COUNTY

THIS LEASE AND AGREEMENT, made and entered into this the 1st day of July, 1966 by and between the Roanoke Rapids Graded School District, party of the first part, and the Halifax County Board of Education, party of the second part.

WITNESSETH:

That subject to the terms and conditions hereinafter set forth, the party of the first part does let and lease unto the party of the second part the following described lot or parcel of land located in Roanoke Rapids Township, Halifax County, North Carolina, together with the Buildings located thereon and the personal property located in said buildings, to-wit:

> All that tract or parcel of land situate in the City of Roanoke Rapids, Halifax County, North Carolina adjoining the lands of C. A. Wyche, Chockoyotte Creek and the lands of J. A. Chaloner, and more particularly described as follows: BEGINNING at the Southwest corner of the lands of C. A. Wyche and running N. 36° W. 960 feet to an oak post, thence S. 54° W. 603 feet to a hickory post on Chockoyotte Creek, thence down main run of said creek to a pine post on said creek, thence N. 54° W. 816 feet to the point of beginning, containing 10 acres, more or less; it being all of the identical real property and improvements Constituting the present John Armstrong Chaloner School Campus.

The terms and conditions of this lease are as follows:

1.

This lease shall begin on July 1, 1966 and shall continue until the 30th day of June 1967, and the consideration and rental; moving from the party of the second part to the party of the first part shall be the payment of the sum of one ($1.00) Dollar per annum.

* * * *

and the further payment of the annual insurance premiums on the aforesaid buildings and personal property.

2.

In the event that the parties hereto desire to renegotiate the lease from year to year, the Halifax County Board of Education must notify the Roanoke Rapids Graded School District at least ninety days prior to June 30th of any given year of its desire to continue the terms of this lease, and the Roanoke Rapids Graded School District shall give its reply within fifteen days from the date of notification of its decision as to this proposed renewal.

3.

The party of the first part shall carry fire and extended coverage insurance on the buildings located on said property and on its personal property located in said buildings and the party of the second part shall reimburse the party of the first part semiannually for the costs of said premiums, such reimbursement to be made within thirty days from the date of receipt of an invoice from the party of the first part.

4.

It is agreed that the party of the second part shall pay all of the usual operating costs during the tenure of this lease, including water, lights and other utilities.

5.

It is agreed that during the term of this lease that two Mobile Classroom Units owned by the first party shall remain on the premises to be used by the party of the second part in addition to the other buildings and equipment, and that one activity bus belonging to the party of the first part shall remain on the premises for use of the pupils who attend John Armstrong Chaloner School.

6.

It is agreed that the items of equipment and furniture that shall remain on the premises during the tenure of this lease shall be determined by the respective superintendents of the party of the first part and the party of the second part.

7.

The party of the second part agrees to assume all liability for any damage to the personal property that remains upon the leased premises during the tenure of this lease.

8.

The party of the second part agrees to maintain the buildings located on said premises, in as good a state of repair as they are at the date of this indenture and to deliver up the same at the end of the term in as good order and condition as they are at this date, reasonable wear and tear, fire and other unavoidable casualty, or Acts of God excepted.

9.

It is further agreed that the party of the first part may inspect the property periodically and effect any necessary repairs if the party of the second part shall fail to make such repairs within a reasonable time, it being understood that any such repairs or upkeep shall be paid for by the party of the second part.

10.

It is further understood and agreed that, during the term of this lease, the party of the second part shall indemnify and hold harmless the party of the first part from any loss or expense whatsoever that might accrue or result from personal injury or damage arising out of the operation of John Armstrong Chaloner School or out of any of its activities, including but not limited to those involving the aforesaid activity bus.

IN TESTIMONY WHEREOF, the said parties have executed this contract in duplicate originals, one of which is retained by each of the parties, this the day and year first above written.

ROANOKE RAPIDS GRADED SCHOOL DISTRICT

By /s/ George Nethercutt
Chairman

ATTEST:

/s/ J. W. Talley
Secretary

HALIFAX COUNTY BOARD OF EDUCATION

ATTEST:

/s/ W. Henry Overman
Secretary

NORTH CAROLINA

HALIFAX COUNTY

Before me, Lucille R. Dickens, personally appeared J. W. Talley, being by me duly sworn, says that he knows the common seal of the Roanoke Rapids Graded School District, and is acquainted with George Nethercutt, who is Chairman of Roanoke Rapids Graded School District, that he, the said J. W. Talley, is the Superintendent of Roanoke Rapids Public Schools, and is Ex-Officio Secretary of Roanoke Rapids Graded School District; and that he saw the Chairman sign the foregoing instrument, and that he, the said secretary, affixed said seal to said instrument, and that he, J. W. Talley, signed his name in attestation of the execution of said instrument in the presence of the said Chairman of the Roanoke Rapids Graded School District.

This the 14th day of September, 1966.

/s/ Lucille R. Dickens
Notary Public

My commission expires:

[Illegible]

NORTH CAROLINA

HALIFAX COUNTY

Before me, Doris W. Netherland, personally appeared W. Henry Overman, being by me duly sworn, says that he knows the common seal of the Board of Education of Halifax County and is acquainted with C. M. Moore, Jr., who is Chairman of Board of Education of said County; that he, the said W. Henry Overman, is the Superintendent of Public Schools of Halifax County, and is Ex-Officio Secretary of Board of Education, and that he saw the Chairman sign the foregoing instrument, and that he, the said secretary, affixed said seal to said instrument, and that he, W. Henry Overman, signed his name in attestation of the execution of said instrument in the presence of the said Chairman of the Board of Education of said County.

This the 14 day of September, 1966.

/s/ Doris W. Netherland
Notary Public

My commission expires:
Spt. 9, 1968

19. Please state what surveys concerning the school unit, in addition to the survey published in December 1968, have been made by the North Carolina state educational officials since 1963, and give the dates and the subject matter of them. Please state the number of (a) maps and (b) school organization plans which were prepared by employees of the defendant since the date on which the 1968 survey was conducted and which pertain to school desegregation or reorganization of schools, but do not include the final map and plan sent to the plaintiff's counsel on February 7 and 10, 1969.

ANSWER: There have been no surveys related to school desegregation or reorganization made by the North Carolina state educational officials since 1963, with the exception of the study conducted by the Division of School Planning of the State Department of Public Instruction in 1968. You have copies of the 1968 survey.

The only map and school organization plan ever prepared and presented to the Halifax County Board of Education by these employees other than free-choice plans was the map and organizational plan which the Board approved and submitted to you on February 7 and 10, 1969.

20. Please state whether any new school buildings have been constructed, and whether any substantial additions have been made to any existing schools, since the beginning of the 1964-65 school year, and what new construction is presently planned, if any. Give the details of all such construction, including the name and location of the school involved, the dates or projected dates of the beginning and completion of the work, and the function, number and capacity of the rooms involved.

SEE ATTACHMENTS

Question 20

No new schools have been constructed by the Halifax County Schools since 1964. However, the board is in the process of planning for the construction of a new consolidated high school to serve all the high school students in the northwestern section of Halifax County. This school will be located on N. C. 48 about six miles north of Aurelian Springs.

Listed below are the schools where major additions have been constructed by the Halifax County Board of Education since 1964.

School	Function of Additional Construction	Beginning Date of Project	Completion Date of Project	Number and Capacity of Room Involved
Brawley	Food Service Facility (Approx. 7525 sq. ft.)	1967	1968	Designed to feed 800
Eastman	Cafetorium (Approx. 7524 sq. ft.)	1967	1968	Designed to feed 800
Hollister	Cafetorium (2,400 sq. ft.)	1965	1966	Designed to serve approx. 300
Hollister	Library (1,200 sq. ft.)	1965	1966	Designed to serve approx. 300
McIver	Six (6) Primary Classrooms Each classroom has 950 sq. ft.	1963	1964	Designed to serve approx. 150 students
McIver	Cafetorium (Approx. 9,009 sq. ft.)	1968	1969	Designed to serve approx. 600 students

White Oak	Cafetorium (2240 sq. ft.)	1965	1966	Designed to serve 300 students
White Oak	Library (1228 sq. ft.).	1965	1966	Designed to serve 300 students
White Oak	Classroom (819 sq. ft.)	1965	1966	Designed to serve 30 students
Inborden	Cafetorium (6650 sq. ft.) (under construction)			Designed to serve approx. 1000 students

21. QUESTION:

With regard to any construction currently underway or planned; as set forth in the answer to question 20, please state whether its probable effect upon the disestablishment of the dual school system in the unit was considered and, if so, describe in detail the nature of the consideration given and of the determination made.

21. ANSWER:

A new comprehensive high school is being planned that will consolidate the William R. Davie, Chaloner, Mc Iver and Aurelian Springs High Schools. When this building is completed it will eliminate the dual school system for high school students in the Northwestern section of Halifax County who are in attendance at the above county schools.

This will be the only high school operated by the Halifax County School System in this section of the County and will serve all high school students in this area.

The approximate racial composition planned for this school is fifty-four (54%) per cent Negro and forty-six (46%) per cent Caucasion.

Pupils attending this school will have a greater variety of course offerings and a better balance of programs of student activities.

In planning for the construction of this high school a special committee was appointed by the Board of Education to include Board of Education members, Advisory School Board members, PTA members, the Superintendents and his staff, to study, plan and make recommendations for this construction.

A public hearing was conducted for the purpose of giving the general public a chance to register their complaints and suggestions.

22. Please describe in detail what, if any, changes have been made in the operation of the school unit since 1954 as a result of any court decisions, statutes, or administrative regulations or guidelines pertaining to desegregation. Please identify the particular decision, statute, regulation or guideline in response to which such change was made.

22. Integration began in Halifax County School Administrative Unit at the beginning of the 1964-65 school year when six Negro students were assigned to and attended the Enfield School, formerly an all-white school. Other students were allowed to attend any school in the school system provided they were in first, tenth, eleventh, twelfth, applied within a stated time or moved from another school unit.

After the enactment of the Civil Rights Act of 1964, schools were operated in 1965-66 school year under freedom of choice plan prepared by the local school unit and approved by the U.S. Office of Education. During the 1966-67 and 1967-68 school years the schools operated under freedom of choice plans and guidelines prepared by the U. S. Office of Education.

On July 2, 1968, Mr. Francis Kennedy, Attorney for Civil Rights, United States Department of Justice, visited our office and stated that the Department of Justice had received a complaint concerning the operation of schools in the Halifax County School Administrative Unit.

On July 30, a letter was received from Mr. Stephen J. Pollak, Assistant Attorney General, Civil Rights Division, U. S. Department of Justice, stating that the complaint had been made by Negro parents residing in Halifax County School Unit; that the investigation revealed insufficient steps had been taken by the Halifax County School Unit to disestablish the dual system of schools and that the Halifax County Board of Education should advise within ten days the steps the Board was prepared to eliminate the conditions described.

Representatives of the Board of Education conferred in Washington, D. C. with representatives of the Civil Rights Division of the U. S. Department of Justice, and the Board representatives were told that substantial progress in both students and teachers must be made toward desegregation of the school system at the beginning of the 1968-69 school term and that a plan must be submitted to completely desegregate the school system not later than the 1969-70 school year.

The Board of Education submitted a proposal that would transfer approximately 600 additional students

and 20 additional teachers to schools other than their predominant race at the beginning of the 1968-69 school term; to take further steps for the 1969-70 school year; and for complete desegregation of the school system not later than the 1970-71 school term.

After receipt of notification that the U. S. Department of Justice had rejected the original proposal of the Board of Education unless the plan provided for complete desegregation and complete compliance with the provisions of the Civil Rights Act of 1964 at the beginning of the 1969-70 school year, the Board submitted another plan that provided for the transfer of 7th and 8th grades from three all Negro schools (approximately 397 additional students) to predominantly white schools; the transfer of 7th grade from one all Negro school (approximately 116 additional students) to a predominantly white school; to transfer 18 additional Negro teachers from all Negro schools to predominantly white schools; to assign the transferred students and teachers to classes without regard to race or color; and to present a plan on or before March 15, 1969 for complete disestablishment of the dual school system and complete compliance with the provision of the Civil Rights Act of 1964 at the beginning of the school year, 1969-70.

By letter dated August 22, 1968, Mr. Stephen J. Pollak accepted the revised plan submitted by the Board of Education.

During September, 1968, the Division of School Planning of the N. C. Department of Public Instruction made a survey of the school unit and made its report on December 2, 1968. This report is on file with the Division of School Planning.

The recommendations in the Survey Report, suggestions and recommendations submitted by various individuals and groups throughout the County have been taken into consideration.

A series of Board of Education meetings, regular and special, have been held during December, January and February for considering a plan to be presented to the Justice Department.

An unofficial visit by Board Attorney, C. Kitchin Josey, Associate Superintendent Ben F. Currin and I was made to Washington on February 6th during which we discussed with officials in the Justice Department some of the recommendations and suggestions that had been made to the Board of Education. On February 8th, the Board of Education adopted a plan and submitted that plan to the Justice Department on February 10 for their consideration.

On March 3, 1969, a letter was received from Mr. Jerris Leonard, Assistant Attorney General, Civil Rights Division, stating that "he had reached the conclusion that the plan does not comply with the requirements of the Fourteenth Amendment and the Civil Rights Act of 1964, and that I therefore cannot consent to its implementation."

In meeting held on March 3, 1969 the Halifax County Board of Education took action to operate schools beginning with the 1969-70 school year on the basis of freedom of choice for every student.

23. Please state in detail what, if any, non-racial administrative difficulties, unrelated to community attitudes, would be encountered should the school unit abandon its free choice plan and implement a school desegregation plan based on pairing or zoning or both. Please also state the time estimated to resolve these difficulties. Please state whether a new plan based on "pairing" or "unitary geographic attendance zones" could be completely implemented at mid-year of the 1969-70 school year, either for the high schools or the elementary schools, or both, and state in detail all of the facts, if any, making conversion to such a plan at such a time impracticable.

ANSWER: Non-racial administrative difficulties that the Halifax County School Unit will encounter if they change from a free choice school plan to a new plan of school organization either "pairing" or "unitary geographic attendance zones" at mid-term of the 1969-70 school year:

a. Some pupils would have to be re-assigned a different teacher and a different school during the middle of the school year. This is not believed to be educationally sound nor psychologically desirable for the children involved.

b. Teachers would be inconvenienced by being assigned to another school which may be further from their residence.

c. State accounting procedures, whereby each teacher is assigned a budget position number by school, would be most confusing when the new teacher assignments are made.

d. Bus routes would have to be determined for 107 buses. An example of this difficulty was seen when it took four days to set up a 10-bus transportation system for the Scotland Neck School at the beginning of the year.

e. Moving the numerous textbooks and library books, audio-visual equipment, furniture, vocational equipment, athletic equipment, and instructional supplies would be a herculean task.

f. Scheduled athletic events could not be fulfilled if high schools are paired.

To convert to any new plan of school organization at mid-term would in our opinion require closing down school for several weeks in order to avoid complete chaos. It would probably require closing school longer than two weeks to insure an orderly transaction.

It has been estimated by members of the central administrative staff that at least 3 to 6 months of concentrated planning would be needed in order to hope for any measure or orderly school operation if there are major changes in the schools' organization.

[Caption Omitted]

MEMORANDUM OPINION AND ORDER

LARKINS, District Judge:

The Court having conducted a Pre-Trial Conference in Chambers in the Federal Building at Trenton, North Carolina on Monday, November 3, 1969, and having considered and decided all motions pending therein, and having requested that the parties present the issues to be determined by the Court, and the plaintiff having proposed an Interim Plan in accord with the State School Survey which plaintiff now finds legally acceptable, the Court thereupon took under advisement plaintiff's motion for immediate implementation in accord with *Alexander* v. *Holmes County Board of Education*, —— U.S. ——, 24 L.Ed.2d 19, 90 S.Ct. ——, [No. 632], (5th Cir., October 29, 1969), the Court directed that the Board meet and reconsider the Interim Plan recommended by the State Division of School Planning of the State Department of Public Instruction, to become effective at the end of the present semester and notify the Court within 30 days;

The Court now having received from counsel for the defendants, under date of November 21, 1969, and having considered a nine-page report entitled, "Problems and Difficulties Involved in the Implementation at Mid-Year of the Interim Plan Recommended by the State Division of School Planning of the State Department of Public Instruction," together with a Summary Of Reasons For Not Implementing The Interim Plan At Mid-Year In The Halifax County Schools, together with a letter addressed to the Court dated November 21, 1969 by the Chairman of the Halifax County Board of Education, a copy of a letter dated November 7, 1969 from A. Craig Phillips, State Superintendent of Public Instruction to Mr. Henry Overman, Superintendent, Halifax County Schools, and a letter from the Scotland Neck School signed by J. S. Wooten, Jr., Principal, Scotland Neck

High School and Board members and others dated November 14, 1969;

It is now therefore ORDERED and DIRECTED that the Board of Education of Halifax County submit on or before December 15, 1969 a Plan to terminate the present dual school system in Halifax County at once and to operate only unitary schools in accord with the provisions of *Beatrice Alexander, et al.* v. *Holmes County Board of Education, et al.*, —— U.S. ——, 24 L.Ed.2d 19, 90 S.Ct. ——, [No. 632], (5th Cir., October 29, 1969).

It is FURTHER ORDERED and DIRECTED that a hearing upon said Plan shall be held in Raleigh, North-Carolina in the United States Courtroom, Thursday, December 18, 1969 and all counsel are notified to be present.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
November 24, 1969

[Caption Omitted]

ORDER

This Court having ordered the defendant Halifax County Board of Education, on November 24, 1969, to submit a plan to terminate the present dual school system in Halifax County at once and to operate only unitary schools in accord with the provisions of *Alexander* v. *Holmes County Board of Education*, —— U.S. ——, 24 L. Ed. 2d 19, 90 S. Ct. —— (No. 632 October 29, 1969), by December 15, 1969, and if appearing that the Court will need statistics in order to evaluate the proposed plan and determine whether or not it meets constitutional standards, it is therefore ORDERED, ADJUDGED and DECREED that this Court's Order of November 24, 1969 be amended as follows:

The Board of Education of Halifax County is further directed to submit along with its plan on December 15, 1969, to terminate the present dual school system in Halifax County, projected statistics for student bodies and faculty by race and school, and a map depicting any proposed zones or attendance areas for each school. The clerk is directed to serve copies of this order on all counsel of record.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
This 4th day of December, 1969.

[Caption Omitted]

MOTION FOR LEAVE TO INTERVENE

The applicants; PATTIE BLACK COTTON and EDWARD M. FRANCIS, public school teachers of Halifax County; and RODNEY BENNETT, a minor, by his father and next friend, LANELL BENNETT; ATTIE BUTLER and BESSIE BUTLER, minors by their parents and next friend, Mr. and Mrs. ALLEN BUTLER; CURTIS CAINE, WILLIE CAINE, and JOSEPH CAINE, minors, by their mother and next friend, Mrs. LIZZIE E. CAINE; LEORY CHERRY and TIMMY CHERRY, minors, by their mother and next friend, Mrs. THERESA CHERRY; ANDREW COFIELD, a minor, by his mother and next friend, Mrs. MARTHA ANN COFIELD; FRANKLIN COTTON, CAROLYN COTTON, REGINALD COTTON, BETHEL COTTON, ANNIE COTTON and ARCHIE COTTON, minors by their grandmother and next friend, MRS BLANCHE COTTON; LARRY DANCY a minor, by his mother and next friend, Mrs. MARY LOU DANCY; GEORGETTA DAYE and CURTIS DAYE, minors by their mother and next friend, Mrs. ANELIZA DAYE; LILIA DEMPSEY, JERONE DEMPSEY, GLADYS DEMPSEY and CURTIS DEMPSEY, minors, by their parents and next friend, Mr. and Mrs. WILLIAM DEMPSEY; VICKIE DELOATCH, a minor by her parents and next friend, Rev. and Mr. C. M. Deloatch; LAFETTE DICKINS, a minor, by his mother and next friend, Mrs. MARY L. DICKINS; FRED DOUGLAS, a minor, by his grandmother and next friend, Mrs. ANNIE SMITH; WILLIAM EARL, a minor, by his grandmother and next friend, Mrs. LENORA WHITAKERS; DOSHIA EVANS, MIMIE EVANS, LISA EVENS and JAMES EVANS, minors, by their parents and next friend, Mr. and Mrs. JAMES EVANS; GEORGETTE HALL and DOUGLAS HALL, minors, by their parents and next friend, Mr. and Mrs. JOHN HALL; JEAN HANNON, TRUDY HANNON, LUCILLE HANNON, JOYCE HANNON and MARY HANNON, minors, by their mother and next friend, Mrs. EIZABETH HANNON; DIANE

HEIKE, DORA HEIKE and JIMMY HEIKE, minors, by their grandmother and next friend, Mrs. MARGARET HEIKE; CYNTHIA HILL, CHERYL HILL, REID HILL and VALERIE HILL, minors, by their father and next friend, JESSIE R. HILL; ARTWOOD JONES, a minor by his mother and next friend, Mrs. LUCILLE JONES; JEFFERY JONES and MATTIE JONES, monors, by their mother and father as next friend, Mr. and Mrs. ARTHUR JONES; YVONNE JONES and MATTIE JONES, minors, by their mother and next friend, Mrs. LOSSIE JONES; MARILYN KNIGHT, a minor by her mother and next friend, Mrs. CLASSIE KNIGHT; CHARMANGE LOFTON, a minor, by her mother and next friend, Mrs. ROSA J. LOFTON: EDDIE PERKINS and MATTHEW PERKINS, minors, by their father and next friend, CLINTON PERKINS; CHARLES PITTMAN and BRUCE PITTMAN, minors, by their father and next friend, OLLIE PITTMAN: JIMMY PITTMAN, a minor, by his mother and next friend, Mrs. MINNIE PITTMAN; HENRY POWELL, a minor, by his mother and next friend, Mrs. EULA MAE POWELL; EMMA POWELL, a minor, by her mother and next friend, Mrs. EMMA POWELL: SYBIL RANDOLPH, a monor, by her mother and next friend, Mrs. HELEN RANDOLPH; WILLIAM REID, PECOIS REID, GWENDOLYN REID and ANGELA REID, minors, by their parents and next friend, Mr. and Mrs. PERCY REID; RAYMOND SMITH, JR., a minor, by his mother and next friend, Mrs. ORAL LEE SMITH; RICKY SMITH, a minor, by his parents and next friend, Mr. and Mrs. CLEVELAND SMITH; DONALD WHITE, ERNEST WHITE and DONALD WHITE, minors by their parents and next friend, Mr. and Mrs. ERNEST WHITE; CARLTON WHITAKERS, DONALD WHITAKERS and EARL WHITAKERS, minors by their mother and next friend, Mrs. CARRIE WHITAKERS: SPENCER WILLIAMS, JR., LORI WILLIAMS and JOSEPH WILLIAMS, minors by their father and next friend, Rev. SPENCER WILLIAMS; *All residents of the area and Town of Scotland Neck.* and ERNEST L. ALSTON, a minor, by his grandparents and next friend, Mr. and

Mrs. TOM M. ALSTON; GREEN BANKS, WINFRED BANKS, DENNIS BANKS, CYNTHIS BANKS and SAMUEL BANKS, minors, by their parents and next friend, Mr. and Mrs. ROBERT E. BANKS; BARBARA D. GAINS, a minor, by her parents and next friend, Mr. and Mrs. SAM D. GAINS; ALONZA MILLS, DENNIS MILLS, JAMES MILLS and ANGELA MILLS, minors, by their parents and next friend, Mr. and Mrs. ALEXANDER MILLS; BURTON PRICE, DONNA PRICE and CARSIE F. PRICE, minors, by their parents and next friend, Mr. and Mrs. BALDY D. PRICE, JR., all residents of the LITTLETON-LAKE GASTON SCHOOL DISTRICT in Littleton Township, Halifax County, North Carolina, on behalf of themselves and all other black or Negro Public School Teachers, Parents and Students similarly situated, and pursuant to Rule 24 of the Federal Rules of Civil Procedure, move the Court for leave to intervene as PLAINTIFFS in the above entitled action in order to assert the claims set forth in their proposed Complaint of which a copy is hereto attached; and in support of this Motion, the applicants respectfully represent unto the Court as follows;

1

That the applicants claims and contentions and those of the main action have questions of law and facts in common and the relief sought by the applicants may be granted as part of the relief the Plaintiff is entitled to in the main action rather than to have the same resolved in separate actions upon the same ground of complaint, to wit; the policy and practice of discriminating against the applicants and members of their class on the basis of race and color in the creation of separate school districts and in the operations and administration of the Halifax County Public Schools as affecting both black teachers and pupils.

2

That the main action and Complaint by the United States of America, represent the applicants but the representation does not include certain available grounds of

complaint that may be asserted in the cause and which the applicants desire to be asserted in order to be entitled to relief based upon events that transpired subsequent to the filing of the Complaint by the U. S. Government and to present additional views in support of the claim of the United States of America.

3

That the applicants, through THE EASTERN COUNCIL ON COMMUNITY AFFAIRS, representing twenty-five eastern North Carolina counties, opposed the creation of the school separation districts, by opposing The Scotland Neck School Separation Bill; the Littleton,-Lake Gaston Separation Bill and the Warrenton School Separation Bill, Chapters 31, 628 and 578, 1969 Sessions Laws, upon racial and constitutional grounds when the bills were being considered by the State Legislature and desire to show unto the Court the racism in the enactment of the bills as part of the legislative history of the same.

4

That the applicants are informed and believe and so allege that the State of North Carolina, through its Attorney General, has moved to intervene in the main action and the applicants desire that the Court and the State of North Carolina consider the matters asserted in the proposed Complaint on the ground that the State of North Carolina owes a duty to the applicants to help relieve the applicants from the matters complained of in the proposed complaint attached hereto.

/s/ James R. Walker, Jr.
JAMES R. WALKER, JR.
501 West 3rd Street
Weldon, N. C.
SAMUEL S. MITCHELL
126½ E. Hargett Street
Raleigh, N. C.
Attorneys for Applicants for Intervention.

NORTH CAROLINA

HALIFAX COUNTY

VERIFICATION

JAMES R. WALKER, JR., being first duly sworn, deposes and says; that he is one of the attorneys for the foregoing applicants for intervention; that as attorney, he and Samuel S. Mitchell have powers of attorney from each of the adult applicants and the next friend of the minors; that under said power of attorney, they have the authority to represent the applicants in this matter and to file action on behalf of each of the applicants as listed and named in the Motion and the proposed complaint in intervention; that he has read and knows the content of the foregoing Motion to intervene; that the same is true of his own personal knowledge, except those matters stated and alleged upon information and belief and as to those matters, he believes it to be true.

/s/ James R. Walker, Jr.
JAMES R. WALKER, JR.
Affiant.

Sworn to and subscribed before me this 1st day of November, 1969.

/s/ Helen C. Lewis
HELEN C. LEWIS, Notary Public
My Commission Expires March 6, 1970

[17] HENRY L. HARRISON, called as a witness by the defendant Scotland Neck City Board of Education, having been duly sworn, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. JOSEY:

Q Mr. Harrison, will you give the Court your full name, please, sir?

A Henry Lee Harrison.

Q Mr. Harrison, where were you educated?

A I was educated in Scotland Neck, North Carolina, and then went on to North Carolina State University.

Q You attended public school in Scotland Neck?

A Yes, sir.

Q At that time was it a part of the county unit?

A No, sir. That was a city administrative unit during those years.

Q Now, have you served on the Halifax County Board of Education?

A Yes, sir.

Q How long?

A I was appointed to the Halifax County Board of Education in September of 1955 and served until December of 1968.

Q At the time that you went on the board, how many schools were there in the county system?

[18] A There were approximately 63 schools in Halifax County.

Q And today how many are there, approximately?

A Seventeen, sir.

Q Now, when was the last county-wide school bond issue in Halifax County?

A The last one was the state school bond issue.

Q I mean the last county school bond issue.

A The last county school bond issue was in 1957—May of that year, I believe.

Q And how much was that school bond issue for?

A Well, the school bond issue was to net the three units in the county $3-million. The school board as such,

all three school boards as such determined the needs of the county at $4-million $300-thousand, but we arrived at a plan on a pay-as-you-go basis that we would sell $3-million and maintain a capital outlay rate to provide the other pay-as-you-go for $1-million $300-thousand.

Q Now, when you say the "three units," what units do you refer to?

A I refer to Weldon, Roanoke Rapids, and the Halifax County unit.

Q And what was the annual capital outlay budget rate in the county at that time?

A The rate at that time, Mr. Josey, was 60¢ [19] capital outlay per $100.

BY JUDGE BUTLER:

Q That 60¢ was simply the debt service on these bonds?

A Capital outlay is debt service, sir. No, sir. Now, when the bonds were voted, the agreement was that the 60¢ rate was to be maintained, the debt service to be taken out of the 60¢ and the remainder of the capital outlay of that 60¢ to the $1,300,000 pay-as-you-go part of that.

BY MR. JOSEY:

Q Now, what did you and the other members of the county school board do to get this bond issue passed?

A Well, I personally spoke on two radio stations throughout the county; I spoke to a number of clubs in and around the City of Scotland Neck, Women's clubs, the Lions, Kiwanis, and people of that nature, and campaigned on the basis that this rate would be maintained, and that we were not $3-million short, but $4-million $300-thousand short in our building program.

Q Now, what was the approximate total vote in the county on these school bonds?

A Approximately 4,000 votes.

Q And approximately how many votes for and how many against?

A There were about—it was carried by 388 votes in [20] the county.

Q Out of around 4,000 total votes, it was carried only by 300 votes?

A About 388, yes, sir.

Q And how did Scotland Neck go on that bond issue?

A Scotland Neck voted for it by a majority of 155 votes.

Q And approximately what percentage of the total vote is there in Scotland Neck or was at that time?

A Oh, I would say approximately 10%.

Q So that Scotland Neck voted 155 of the total majority in the entire county of 388; isn't that correct?

A That's correct. In that bond issue, Mr. Josey, there were only four precincts out of seventeen that voted for the bond issue.

Q What in relationship to rural and town precincts —how did that stand on the vote?

A Well, the majority of the rural precincts voted against it. In fact the City of Roanoke Rapids and the City of Scotland Neck were the ones that really carried it. Now, I think Enfield had a small majority too for it.

BY JUDGE LARKINS:

Q This was in May of '57?

A May of 1957, yes, sir.

[21] BY MR. JOSEY:

Q Now, what did the county commissioners do shortly thereafter concerning the tax rate, after the passage of the bond issue?

A Well, after the passage of the bond issue, the county commissioners—when we presented our budget to them for the coming year, we had the 60¢ capital outlay rate.

Q When you speak of "we," you are talking about the Halifax County Board of Education?

A Well, all three boards appeared together before the county commissioners. We were using the 60¢ capital outlay rate as the basis for beginning to repay these bonds and to meet this pay-as-you-go basis. The county commissioners said, well, you can't spend all of this money at this time, and said, "Rather than raise taxes,

would you let us use 10¢ of your capital outlay funds for revaluation," which was the first revaluation that I know of in Halifax County, "and we will repay it back." Reluctantly the boards agreed to that and had them to adopt a resolution, which is still in their minutes and records, I believe, concerning that. However, this money has never been repaid nor has the 60¢ capital outlay been maintained since 1957.

Q In fact, it has been gradually decreasing ever since that time?

[22] A Yes, sir.

Q Now, out of the 1957 bond issue, how much approximately did the County Board of Education get of that $3-million?

A Approximately $2-million, sir.

Q From 1957 until today, how much of that county bond money has ever been spent on any facility within the corporate limits of the Town of Scotland Neck?

A None.

Q I believe there was a state-wide school bond issue in 1963, is that correct?

A Yes, sir.

Q And do you recall approximately how much money the Halifax County school administrative unit obtained from that state bond issue?

A Approximately $1-million, sir.

Q How much, if any, of that state school bond money, that million dollars, was spent on facilities within the corporate limits of the Town of Scotland Neck?

A None has been spent there. In fact, that money is still under Dr. Pierce's control, although I understand it has been obligated to go to outside.

BY JUDGE BUTLER:

Q When was that money made available?

A Right after the state-wide bond issue in 1963, sir.

[23] Q And none of it has been spent?

A Well, I think the county has spent probably $100,000 on maybe one or two projects. I think the county superintendent could give you those figures. I believe the figure that is remaining in Raleigh today is approximately $827,000 or thereabouts.

BY MR. JOSEY:

Q Now, what are the conditions of the buildings and classrooms there in the Town of Scotland Neck since your tenure on the Halifax County Board and today?

A Well, when I went on the county board, or rather, when we went into the county system—when the Scotland Neck unit went into the county system, our buildings were comparatively new, compared to the remainder of the county units; and for a number of years they were working to bring up the standards of the other schools around. Now every survey that has come since I have been a member of this board has stated that the facilities in Scotland Neck were the worst of any in the county. In fact, out of all the classrooms available in Scotland Neck, the last 1968 survey shows that only four are standard.

Q And all others are below standard?

A Are below standard—substandard.

BY JUDGE LARKINS:

Q How many are there?

[24] A There are about 28, sir.

BY JUDGE BUTLER:

Q Now, I don't know that this has anything to do with this hearing, that is, my question, but I am curious. Mr. Harrison, if Halifax County has approximately $900,000 in money available for school construction since 1963, and there is a need for expenditure of money for that purpose, has any effort been made on behalf of the people of Scotland Neck to prize some of that money out of the board of education or the county commissioners or whoever has it?

A Yes, sir, there has.

Q And I assume without success.

A Well, sir, in 1966 I appeared along with members of the Halifax County Board of Education in Dr. J. L. Pierce's office, Division of School Planning, in Raleigh, on two separate occasions, at which time we requested that $750,000 of that money be turned over to build an integrated high school in 1966 in the Scotland Neck area.

Q No legal action was taken?

A No, sir, we didn't take any legal action. They refused to do it on the basis that they felt they had some things up in the other parts of the county which were more important right then, your Honor.

Q But as I understand you, the money hasn't been spent anywhere?

[25] A It's sitting there right now as far as I know, yes, sir.

Q Well, while they have been holding this money, has there been any effort made to have any bond elections in the county?

A No, sir, because of this fact now: In their recommendation to our board for this consolidation program that is before you or the survey that Mr. Kennedy has presented, they recommend a $4-million bond issue, your Honor: That is the maximum extent of the entire county. The entire county is only taxable for school bonds at $5,500,000. We are still paying on the last $3-million; we owe a million and a half; so, therefore, $400,000 is the maximum we can tax ourselves.

Secondly, that same report recommends in current expense in capital outlay an increase of 53¢ in taxes when that thing is adopted county-wide. Now, I want you to understand that that includes not only Halifax County, but the Roanoke Rapids and the Weldon units, too, have to participate to get that kind of money. And even at that, sir, there will be a $600,000 deficit which will have to be accumulated in a sinking fund for two years before we would have enough money to build two consolidated high schools in Halifax County.

JUDGE BUTLER: All right. Thank you, sir.

[26] BY MR. JOSEY:

Q Now, after these efforts of you and other people in the Scotland Neck area in 1963, was there planning begun at that stage for a separate school administrative unit in the Scotland Neck area?

A Each year after 1957, with our budget request we presented to the county commissioners of Halifax County a brief, showing how much our tax was cut last year from the 60¢, and brought it up each year and requested

that those monies be restored in each budget. I know until 1963 that figure at that time had amounted to over $800,000.

Q That was with the county commissioners.

A That's right. And seeing at that time that we were not getting our fair and proportionate share of all the funds that we should be getting and that I couldn't see any possibility of other funds, we began looking to a city system in 1963 when Mr. Charles Fleming was principal down there, in order to determine if we couldn't improve and get better facilities for our school.

Q Now, is Mr. Charles Fleming here today as a witness and listed as a witness?

A Yes, sir, I believe he is.

Q And to your knowledge did he then, together with the local school committee and you and others, begin to plan for the adoption of a separate city unit, and in fact [27] introduced a bill in the legislature in 1965?

A That was the beginning of it, yes, sir. And it culminated after study with the district school committee, advising with the district school committee, the principal, myself and oher interested citizens, we decided—after securing all the data that we could from the various people around, we decided that we would get our pro rata share better if we were in a city system; and so we began to organize in 1963 to get a city system.

Q In the legislature of 1965 was there a bill introduced to create a separate unit in Scotland Neck.

A Yes, sir, there was a bill introduced in the 1965 legislature requesting a city system for Scotland Neck, naming the members to the board and their terms, and I believe we had on that thing two Negro citizens at that time.

Q And what happened to that bill?

A Well, that bill was introduced by our representative that lived in Scotland Neck at that time in the lower house, and it passed the lower house without any trouble whatsoever. When it got to the senate, apparently the senator from the upper end of the county didn't concur—

MR. KENNEDY: Objection to what the senator apparently didn't concur in.

A (Continuing) In any event, it did not get through the senate. I presume pressure was brought to bear by [28] outside interests.

MR. KENNEDY: Objection to his assumption.

JUDGE BUTLER: Yes, yes.

BY MR. JOSEY:

Q At any rate, it failed to pass the senate; is that correct?

A That's correct, sir. To my knowledge it never got on the floor of the senate I don't think.

Q Now, after the failure of that bill in 1965, I believe you have already testified in answer to a question of Judge Butler that you, together with other members of the county school board, went to Dr. Pierce's office?

A I didn't hear you, sir.

Q I said I believe you have already testified to the next sequence of events, and that is that you and other members of the school board, some of them, with Mr. Overman, the superintendent, went to Dr. Pierce's office in Raleigh to try to get this integrated high school built with the funds there, and that was turned down?

A That's correct, sir.

Q Then in 1968 did you and others begin planning again to introduce a bill, the bill which is now before this court, for a separate city unit?

A Well, at some time between 1963 and this time, we had had figures on how much money had been expended in [29] Scotland Neck and had compared it on a comparative basis, if we had gotten our proportionate share, our allocated share such as a city unit would have been, how much it would be: and it happened in that 3-year period that we would have gotten three times more money than we did get. The people were still dissatisfied. They wanted new facilities; they wanted their curriculum improved; they were becoming worried about the teachers, and they just wanted something done. And so they were on me every time I turned around. And finally we decided that the city system, incorporating

the people that wanted it, which was the City of Scotland Neck, the corporate limits of the City of Scotland Neck, was what we would pursue.

Q And based on that, rather than to go into detail—and I believe it is in your deposition—you and others then went to Tryon, North Carolina, and went over the thing with Mr. Dussenbury, the superintendent?

A. Yes, sir. We looked into the smallest school system in the state to be sure that we would have enough have, we went to the smallest school system and compared budgets to be sure that we would be financially—funds; after we arrived at the amount of funds we would compared budgets, curriculums too, to be sure that we would have enough money to operate.

[30] BY JUDGE LARKINS:

Q Mr. Harrison, how did you arrive at the conclusion that the establishment of a city system would enable you to get more funds? Did you have reference to these county bond funds?

A I have reference to any funds, sir. In the city school system your county-wide tax program is pro-rated on a per-student basis. For instance, suppose you have a million dollars coming in in county current expense, county capital outlay. All right, the million dollars—if Roanoke Rapids has 10,000 students or 5,000 students or 2,000 students, they get their proportionate part of that money on a pro rata student basis; the county gets its part on a pro rata student basis. Now, our county is 65 miles wide, and we have approximately 12,000 to 13,000 students. We get it on a per-student basis, but it is not spent, sir, on a per-pupil basis.

JUDGE LARKINS: All right. You may proceed.

BY MR. JOSEY:

Q State whether or not you and others then appeared before the legislative committees, and this bill was eventually passed with a vote of the people?

A That's correct, sir.

MR. JOSEY: Your witness.

[31]

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Harrison, twice in your testimony this morning you referred to a trip to Raleigh to see Dr. J. L. Pierce in 1966 to build what you and your attorney called an integrated high school?

A That's correct.

Q Are you familiar with the written proposal that was submitted in November of 1965?

A Fairly familiar, yes, sir. I have seen it. It's been a good while since I have seen it.

MR. KENNEDY: May I approach the witness, your Honor?

JUDGE LARKINS: Yes, sir.

Q I will show you now what has been marked and introduced as Plaintiffs' Exhibit No. 14 which reads at the top, "North Carolina School Facilities Program, 1963, Form SP-2, Summary of Proposed Construction." Would you look at that, please, and tell us if that is the program proposal that you were talking about with Dr. Pierce?

A Yes, sir. On Page 2 of that form it shows that we requested in 1966, $750,000 for the Scotland Neck high school building and gymnasium.

Q Is it not true that approximately a mile or less from the Scotland Neck high school there is another high [32] school?

A Yes, sir.

Q And that is Brawley high school, is it not?

A That's correct.

Q Slightly larger than Scotland Neck high school, isn't it?

A Yes, sir.

Q But there have never been any white children that have attended that, have there?

A Not to my knowledge, sir.

Q It's all-Negro, isn't it?

A Yes, sir.

Q And it's just outside the city limits, isn't it?

A It's outside the city limits, yes, sir.

Q I'll ask you to look at this Plaintiffs' Exhibit 14 again and ask you if there are any suggestions in that report that the Brawley high school would be included in the building of the high school that you referred to at Scotland Neck?

A A lunchroom for Brawley would, yes, sir. They did not have a lunchroom of any type at that time over there.

Q Referring to the third page of this exhibit, is there a section on the form which asks, "Name of schools this project will replace"?

[33] A That's right, yes, sir.

Q Would you please read what is typed in after that, please?

A "Replace obsolete high school building and gymnasium."

Q And this is for Project No. what?

A Two.

Q And is Project No. 2 the $750,000 that you referred to for Scotland Neck high school?

A That's correct.

Q What was the method of assigning children to school in 1965-66?

A Freedom of choice, sir.

Q Had there been any pairing of grades between Brawley and Scotland Neck?

A No, sir, not that I know of.

Q Did this program for new construction at Scotland Neck provide for the possible pairing of grades between Brawley and Scotland Neck?

A Well, nobody had ever mentioned pairing of grades at that time, Mr. Kennedy. Everything prior to that time operated on a freedom of choice. I think that was the law of the land. However, when I appeared before Dr. Pierce, his question to me was this: "Mr. Harrison, are you sure the people are ready for an integrated school in your area?" [34] And I said, "I'm sure they will be. They need the facilities badly. They are willing to do their part and do what's right."

Q Let me show you Page No. 4 of the exhibit—No.

VIII, subparagraph A. Roman numeral VIII—doesn't that read "Long-range plans for this school"?

A Yes, sir.

Q And under subparagraph A is "Probable enrollment"?

A Yes.

Q What is the figure for enrollment in high school in September 1965?

A 305 students.

Q And the projected enrollment for September 1975 at the same school?

A 370.

Q A difference of some 65 students?

A That's right.

Q Do those figures include additional Negro children, or white children, or can you tell?

A Well, the school, if it were going to be built, I think you will find somewhere in there that it says it's to be built where it can be extended or enlarged as needed. Those facilities were not complete facilities to start with, because at that time you couldn't build a complete high school for $750,000, you know as well as I do, Mr. Kennedy. [35] But when you have approximately $1-million to be divided among 65 miles of schools, and 7 people sitting on the board, and it looks like the money is getting away, you can imagine what is taking place.

Q Would you read subparagraph B for the Court, under section VIII, "Long-range plans"?

A "No consolidation anticipated at this time. Probable increase in enrollment due to integration in 1966."

Q Did you know of any plans to integrate the Scotland Neck s[illegible] at that time with the Brawley school?

A No, sir.

Q Scotland Neck was to remain separate and apart from Brawley?

A As far as I know, both schools were to remain under a freedom of choice plan, yes, sir.

Q You are familiar, I'm sure, with the School Survey of 1968 for Halifax County by the State Department of Public Instruction, Plaintiffs' Exhibit No. 2?

A Yes, sir.

Q Are you familiar with the recommendations of the interim plan?

A Yes, sir.

Q Do those recommendations include a change in the grade structures both at Scotland Neck and at Brawley school?

[36] A Yes, sir.

Q And as a result of that change, to make Scotland Neck teach grades 10 through 12 for the general area of the southeastern part of the county?

A That's correct.

Q And to have Brawley teach grades 8 through 9 for the children in that area?

A That's correct.

Q This is a type of consolidation, isn't it?

A Yes, sir, that is a type of consolidation. That's in 1968, sir.

Q So the recommendations for 1968—

A Now, this figure you are giving me is 1966 over here.

Q So that the 1968 survey recommendations are a bit more far-reaching than the 1965?

A That's right, than freedom of choice, yes, sir, you're right.

Q Is there any freedom of choice that you know of in the interim plan recommendations of the Halifax County Survey?

A No, sir, I don't think there is any freedom of choice there.

Q But freedom of choice was the basis of assignment in 1965 when the proposals were made to Dr. Pierce?

[37] A That's right, sir.

Q Are you aware that the Attorney General of the State of North Carolina has made a ruling with respect to the question of whether the Scotland Neck school system could share in the proceeds of the 1963 bond issue?

A I have heard that, yes, sir.

Q Do you know that he has ruled that Scotland Neck could not share in the proceeds from the 1963 state school bond issue?

A I know that he has ruled that. I think that can be questioned, though, later.

Q Pardon me.

A I don't agree with it.

Q I'm sorry, your comment before that I didn't catch. You say you are going to challenge it?

A I didn't say we were going to challenge it. I say I think it could be challenged.

Q Do you know of any legal actions brought to challenge that?

A Oh, no. No.

JUDGE LARKINS: Anything further?

MR. KENNEDY: One moment, your Honor.

BY JUDGE LARKINS:

Q Mr. Harrison, have you examined the proposed plan of the Halifax County Board of Education that was submitted [38] on Monday of this week?

A No, sir, I haven't studied that, sir.

BY MR. KENNEDY:

Q Mr. Harrison, what educational advantages, if any, would there be with a high school in Scotland Neck of 305 children over a consolidated high school in Scotland Neck of double that figure?

MR. JOSEY: Objection, your Honor, on the 305. I don't know where he got that.

MR. KENNEDY: The 305 figure was the enrollment in September of 1965 at the Scotland Neck school.

A You are still talking about this same Exhibit 14, I take it.

JUDGE LARKINS: He is still talking about this same exhibit, I take it—14, Page 2, 3, and 4.

MR. KENNEDY: Yes, sir.

JUDGE LARKINS: Overruled.

MR. JOSEY: I will withdraw the objection.

A It wasn't limited to 305. It said there the provisions would probably have to be enlarged because of integration.

Q But the projected—

A Now, I felt this: if the new high school were [39] built, our good colored friends we have there in town

would come on to school with us. It didn't bother me—that angle of it—at all.

Q You read to the Court that the projected enrollment for September 1975 was 370?

A Yes, sir. Well, that's Dr. Pierce's or somebody's thinking up there. I don't think he knows any more about what the projected enrollment of that school is going to be than any of these people over here, in 1975.

Q Are you familiar with C. M. Moore, Jr.?

A Yes.

Q Who is he?

A He's chairman of the Halifax County Board.

Q Does this appear to be his signature at the bottom of that form?

A That's right.

Q And does this appear to be the signature of Mr. W. Henry Overman, the superintendent and secretary?

A Yes. I'm sure those people had reasons for signing that. They were projected from somewhere. But we have had those figures projected and turned around on us since I have been on the board, one time to my own knowledge.

Q Well, just answer my other question: Do you know of any educational advantages of children in a high school of either 305 or 370 over a high school of some three or [40] four grades and 750 children?

A Yes. More individual attention for one thing; closer relationship with the parents. And I think you can do things in a small school experimentally that you can't do in a large school experimentally. I think you can control your children better. You'll find that the majority of your schools that are having your big troubles now, anyway, are your larger schools. I think that's an asset to a small school. We have had some right big men come from our little bitty small school down there, and I'm sold on it, that's all; I just think we can do a lot for them.

Q Do you know of any professional educators of the North Carolina Department of Public Instruction who

share your views on the relative merits educationally of a 370-pupil high school over a 750-pupil high school?

A Oh, well, I wouldn't know what they think, no, sir. I don't think that figure was even ever discussed, though, in the meeting with Dr. Pierce; I don't think he said a word about it.

Q Are there any reasons why a high school of the projected size under the 1965 projection of 370 children would be better for the whole county school system than would be a consolidated high school of twice that size?

A Oh, yes, there could be reasons why they would [41] be better. I understand that they are building them smaller up north every day now, according to some of my reading.

MR. KENNEDY: No further questions.

CHARLES E. FLEMING, called as a witness by the Scotland Neck City Board of Education, having been duly sworn, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. JOSEY:

Q. Mr. Fleming, what is your full name?

A Charles Eaton Fleming.

Q Mr. Fleming, where do you live now?

A My home now is in Cleveland, North Carolina, near Salisbury.

Q And what do you do?

A I am principal of the West Rowan High School.

Q And how long have you been there at the West Rowan High School?

A This is my fifth year there.

Q Mr. Fleming, were you at one time principal of the Scotland Neck school?

A That's true. I was there from 1962 until 1965—three years.

Q And during the time that you were there, were you [42] involved in any studies that you and others made

in connection with the creation of a separate school unit for the Scotland Neck area?

A Yes, sir. There were a number of different requests, primarily from the district school committee, and I did attempt to get some factual information for them.

Q And when was the earliest that you recall that the discussions took place concerning this possibility and the studies?

A The earliest date that I can document was May 22, 1963. According to the minutes of the local district school committee, that was the meeting date with the school committee and the local members on a survey committee. And I do remember at the conclusion of this review of the survey that had been made, there was a discussion of the possibilities of a city system.

Q Subsequent to that time did you in fact gather data on the possibilities of creating a separate school unit for the Town of Scotland Neck area?

A I did. I was being asked questions on just what kind of a school program could we have as a city system opposed to what we already had, and so I attempted to get some information of a factual nature that could answer those questions.

Q What did you get? What did you then do?

[43] A One of the first things I did was to send out letters to a number of other high schools requesting their class schedules, and I think there were 8 or 10 schools that were contacted in various parts of the state. Two of the schools that were contacted were ones that were operating without a supplemental tax and were about the same size as the proposed school between Enfield and Scotland Neck. After getting those schedules back, I did make a tabulation of the offerings that they had and the offerings that we had, and came up with the conclusion that there would be very little to gain so far as course offerings were concerned in a consolidation with Enfield.

Q Was that a proposal at one time of the people of Enfield to have the two schools, Enfield and Scotland Neck, consolidated and put about 10 or 12 miles out in the country?

A That's true, yes, sir.

* * * *

[48] BY MR. JOSEY:

Q Now, Mr. Fleming, at that time did you obtain certain data from Mr. Overman, the superintendent of the Halifax County schools?

A I did obtain some data from Mr. Overman, that's correct.

Q Basically what was the nature of the data that you obtained from him?

A Well, I received a copy of the county budget and also received a reply to one or two requests asking about specific expenditures. For instance, the amount for heat and water and coal and that sort of thing, at Scotland Neck.

Q Now, did you also contact and make a visit to Dr. Hammack who was at that time Mr. Hammack and the superintendent of the Weldon City schools?

A I did go to see Dr. Hammack, and I believe that [49] was in the fall of 1963, and talked with him about the advantages and disadvantages in a small city unit which he was in at that time.

Q Is Dr. Hammack here today, and is he now superintendent of the Elizabeth City schools?

A Elizabeth City and Pasquotank County, I believe. He is present.

Q Now, based on the gathering of that data, did you make a formal report in writing with some conclusions to the local district school committee of Scotland Neck on or about January 1965?

A I did send out a mimeographed sheet to the members of the school committee and in that sheet gave them some figures on the amount of current expense money that the unit would have received by law if it had been a city unit. I also gave them some figures on the money that had actually been spent there by the county.

Q And how did the figures that you came up with compare, that is, the figures that were actually spent in the Scotland Neck area under the county system, and those that would have been spent had the unit been a separate unit?

A Under current expense money as a city unit, the unit would have received from the county $122,848; and

the current expense money that had actually been spent there [50] was $96,743, which showed that the school would have received $26,000 more as a city unit than had actually been spent while it was a county unit.

Q Now, that was for current expense?

A Current expense. In capital outlay funds the unit would have received $47,166; and the amount of capital outlay funds that had been spent—and this figure that I am fixing to give you was an average figure for the past three years at that time—was $17,462, which showed a difference of $29,000.

Q That's on an annual capital outlay?

A Annual capital outlay budget, yes, sir.

BY JUDGE BUTLER:

Q What was the difference you say? $147,166 that they would have received for capital outlay purposes and an average over a 3-year period of $17,462 that was actually spent, the difference was what?

A Your Honor, as a city unit, the unit would have received $47,166. But they had actually received $17,462, a difference of $29,703 approximately.

BY MR. JOSEY:

Q So that had it been a city unit, it would have received almost three times as much annually on capital outlay than it actually had received; isn't that correct?

A Than they actually had received for the three [51] previous years.

Q Now, how long did you say you were there in Scotland Neck?

A Sir, I was there three years, 1962 to 1965.

Q And compared to other school committees and school leadership, how would you compare the efforts of the people of Scotland Neck with other units that you have worked with in your career?

MR. KENNEDY: Objection. I'm not sure we know what the other units are.

BY MR. JOSEY:

Q What other units have you been connected with?

A. I was principal of what is now the Madison-Mayodan city schools, the Halifax County schools, the Cleveland County schools, and the Rowan County schools.

Q Go ahead.

A I can say in all earnestness that there was a general interest in Scotland Neck, interest on the part of the people in their schools that I have not seen in that degree of interest in any of the communities that I have served in; and there was a good deal of local participation, local interest, and I found that the people were willing to pay for anything that could be gotten to improve the schools.

MR. JOSEY: Your witness.

[52]

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Fleming, you mentioned a bill that was introduced or that you worked to get some facts on that was introduced in 1965. Do you have a copy of that bill in the papers that you have with you?

A The Enabling Act of '65?

Q Yes, sir. The proposal, yes, sir.

A Yes, sir, I do.

Q Are you familiar with the townships that that bill would have included or the schools that that bill would have included?

A I am somewhat familiar.

Q What schools would have been included in that unit which was proposed in 1965 to the state legislature?

A I believe, of course, the Scotland Neck, the Brawley High School, Bakers School. I'm not sure what else.

Q May I show you a map that appears on Page 6 of the 1968 survey and ask you if you could help identify the schools that would have been included in the 1965 proposal?

A I can give you that from this Enabling Act, I think. This is the precincts; it does not list the schools specifically. This gives the boundaries of the proposed school district.

Q In order to save some time, could I suggest that [53] in addition to Scotland Neck and Brawley that Bakers School would have been included?

A That's true.

JUDGE LARKINS: Yes, he said Bakers.

BY JUDGE LARKINS:

Q How about Dawson?

A Dawson would have been included, yes, sir.

BY MR. KENNEDY:

Q How about Tillery Chapel?

A I believe so.

Q And Thomas Shields?

A I believe so.

Q And a school which is now no longer in existence, Hobgood?

A I'm not certain about Hobgood, whether that was included in this first Enabling Act or not.

Q But Inborden and Enfield were not included, is that correct?

A That's correct.

Q It's true, isn't it, that freedom of choice was the basis of pupil assignment at that time, in 1965?

A I believe that's correct.

Q Do you know the approximate number of children that would have been included?

A I believe it was about 2800 and some students that [54] would have been included.

BY JUDGE LARKINS:

Q Would it be fair to say that that proposed district in '65 would have taken almost half of the geographical territory of the county, every school east of Enfield? Because you have named Tillery Chapel, Dawson, Bakers, Scotland Neck, Brawley, and Thomas Shields.

A Your Honor, I believe it would be something less than half the county, I can't say positively.

MR. KENNEDY: Excuse me. For the Court's information, your Honor, if you are referring to Page 6 of our exhibit—

JUDGE LARKINS: Yes, that's what I had reference to.

MR. KENNEDY: —there's another school that was in existence at the time, Hobgood, that was in that general area which is no longer being operated by the school system.

JUDGE LARKINS: Where would Hobgood be with relation to Scotland Neck?

MR. JOSEY: Your Honor, it was right next to Thomas Shields. They were pretty close together.

BY MR. KENNEDY:

Q Mr. Fleming, when you were reading to the Court [55] some figures for current expenses and capital outlays, were you reading from a piece of paper?

A Yes, sir, I was.

Q May I look at that, please?

A Yes, sir.

Q With the Court's permission, would you read the last paragraph from that paper, please?

A Yes, sir.

Q Is that dated January 25, 1965?

A That's correct.

Q It's from you to the Scotland Neck school committee?

A That's correct, sir.

Q Would you read the last paragraph, please?

A "One will notice that the schools in the proposed unit would receive more money as a city unit than they are receiving as part of the county unit. The explanation for this is that the county unit has been spending its money on the basis of greatest need rather than on the basis of equal distribution. This is the policy of most boards and no one is at fault."

Q Thank you, sir. And were you the author of that statement?

A Yes, sir.

Q Going back for one moment to the admission of [56] 2800 pupils approximately in the then proposed unit, how many of those were black and how many white; do you recall?

A I have a breakdown here, I believe, that's accurate, by schools. Scotland Neck: 824 would have been white at that time. Hobgood: 95 that would have been white. Brawley: 1181. They would have been black. Bakers: 374 black. Thomas Shields: 369. And I believe 2843 students that would have been anticipated in that unit at that time.

Q Would you give us Tillery Chapel?

A I believe that that was not included, as I remember in this first Enabling Act.

KENNEDY: Thank you, sir. No further questions.

REDIRECT-EXAMINATION

BY MR. JOSEY:

Q Let me ask this. He asked you about the Hobgood school, whether it was included. It is your recollection that Hobgood was included in the first draft of the bill, and that they came and said that they didn't want to be in it because of the tax and asked to be dropped from the bill, and that the final bill that was introduced in the legislature did not include Hobgood; isn't that correct?

A I believe you are correct about that and was the reason I had some hesitancy. I remember it was included at [57] first, but I am inclined to think it was not included when the bill was introduced.

MR. JOSEY: All right. That's all.

DR. BENJAMIN P. HAMMACK, called as a witness by the defendant Scotland Neck City Board of Education, having been duly sworn, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. JOSEY:

Q Would you give the Court your name, please, sir?

A Benjamin Paul Hammack.

Q Is it Doctor Hammack?
A Yes, that's right.
Q Where do you live, sir?
A Elizabeth City, North Carolina.
Q What is your job at the present time?
A I am superintendent of the Elizabeth City-Pasquotank County schools.
Q And prior to that time, what was your position?
A I was superintendent of the Weldon City administrative unit.
Q And approximately how large was the Weldon City unit at the time you were there, the approximate total number of students?
[58] A Well, it averaged during that time about 2,400 students.
Q And how long were you superintendent of that unit?
A Nine years and one month.
Q And what position did you hold prior to that time?
A Prior to going to Weldon, I was at Duke University as a graduate assistant for one year, and prior to that I had served as a principal in the Raleigh city schools for 6 years, as a principal for two years in the Kannapolis city schools, and as principal for one year in the Cabarrus County schools. Prior to that I was a high school teacher in Gaston County for five years.
Q What degrees do you have, sir?
A I have a B.A. Degree from Furman University and a Master of Education and Doctor of Education degrees from Duke University.
Q Now, Dr. Hammack, back sometime in 1963 were you contacted by Mr. Fleming who was principal of the Scotland Neck City school at that time?
A Yes, I was.
Q And did you have a visit with him?
A He came to my office, visited me in my office.
Q What was the stated purpose of that meeting?
[59] A He was seeking information regarding city administrative units for the purpose of—I understood he was getting this information for Mr. Harrison and the members of his committee.
Q And what information at that time did you give him?

A I remember giving him a copy of our budget, that is, the administrative unit budget. I also remember giving him a copy of the budget I prepared for the individual schools, alloting money to the individual schools on a per capita basis. I may have given him other documents, I don't recall at this time. And then we did discuss in general the advantages and disadvantages of a small city administrative unit.

Q What in your opinion are the advantages of a small city administrative unit, if there are any?

A Well, I think it depends upon the particular situation. At that time I felt as though in Weldon we had a better school system, able to give our children a better education than if they had been a part of the county school system.

Q And why was that?

A Well, we had more funds per student than the county.

Q And where did they come from?

[60] A We had a local supplemental tax.

Q During that 9 years, in general were you familiar with the general conditions and circumstances of the Halifax County system?

A Well, Mr. Overman and I worked very closely together, but I really didn't know too much about their school system as a whole. But as we discussed the situation, knowing what we could do in Weldon and knowing what they were not doing in the county, I was of the opinion that we were giving our children a better education.

BY JUDGE LARKINS:

Q Is that the only reason you decided—from additional revenue from the Weldon taxation?

A Well, the additional revenue made it possible for us. For example, with these funds we were able to supplement the teachers' salaries extra, and at that time in fields such as mathematics and science, by having funds for extra teachers' supplement, we were able to fill these positions with well-qualified people. If we had not had these funds, we would not have been able to do it. Also,

we were later able to vote a local salary supplement for all teachers. It was only $100 a year, and that's mighty little money, but it was increased later on to $200, and we believed this was an important morale factor with our teachers, and we did think that this was a move in the right [61] direction. Also in 1962 we stopped charging the students any fees to attend the school. We felt like this was a very important move on our part. Also, we were able to establish a very good Industrial Arts Department which we felt was a real accomplishment.

Q There are three things, then: salary increase of $100 to $200 a year.

A Well, there was no supplement at first. We started with $100 and then later on, recently, increased it to $200. Also, in the area of school supplies we were able to, I feel like, adequately supply our teachers and students with supplies; for instance, several teachers commented to me that they had much rather be with us than with the county because of the school supplies.

BY MR. JOSEY:

Q Were you in a position to more closely supervise the students as a superintendent than in a unit, say like Mr. Overman with 11,000 students—and, supervise the teachers?

A It's my opinion that the duties of a superintendent are such that neither Mr. Overman nor I are able to supervise the teachers, I'm afraid. I mean the duties are such. I know his duties were such that he couldn't, and in my case I had very little time, actually, to get into the classroom with the teachers.

[62] Q Would you say you knew your teachers individually?

A I'm sure that I knew my teachers. I would believe that I knew my teachers more intimately, personally, than he did. I should say this: The first 5 years I was in Weldon as superintendent, I also had to serve as principal of the Weldon High School, and there at that school I did know those teachers real well.

Q Now, at the conferences that you had with Mr. Fleming or in the conferences that you had with any of

the Scotland Neck people at that time, was there any mention of race that motivated this school bill or this study?

A No. Most of my information regarding the situation came from Mr. Fleming's wife, Mrs. Dorothy Fleming, who was serving at that time as our Attendance Counselor.

Q For the city system of Weldon?

A Well, she actually served, I believe, all three systems in a cooperative endeavor. On several occasions she discussed with me the interest in Scotland Neck for a separate administrative unit, and I recall that she said that the people were very concerned about this, that they said they slipped up and let the '63 legislature adjourn without action that they should have had at the '63 legislature, and they were anxious to get everything in order for the '65 legislature.

* * * *

[65] BY MR. JOSEY:

Q Will you give the Court your name, please, sir?

A Hugh D. Randall.

Q And where do you live, sir?

A Hendersonville, North Carolina.

Q What is your position?

A Superintendent of the Hendersonville City schools.

Q How long have you been superintendent of the Hendersonville City schools?

A Fifteen years.

Q And prior to that where were you?

A I was principal of the Orlando schools in Orlando for three years, Lewiston-Woodville School for two years, and I taught for a year in Franklin County.

Q And where did you attend college?

A I did a Bachelor of Science at Wake Forest and then a Master of Arts at Wake Forest College.

Q How many students are there in the Hendersonville City unit?

A. The present enrollment is about 1,900 to 2,000.

Q And approximately how many of those are Negro?

A Ten to twelve percent of them, I guess.

Q Now, what county is Hendersonville in?

A Henderson County.

Q What percentage would you say, approximately, are [66] Negro in the surrounding county?

A I would have to guess. It's much lower. Probably three or four percent.

MR. KENNEDY: Objection to his guessing.

JUDGE LARKINS: Well, that's his best estimate.

BY MR. JOSEY:

Q There is a lesser percentage of Negro to white in the surrounding county than there is in your city unit, isn't that correct?

A That is correct.

Q Now, what advantages, if any, are there in your opinion in a small city unit—Strike that.

Do you have a supplementary tax?

A Yes, sir. We levy 50¢ on $100 valuation.

Q And state whether or not in your opinion there are some advantages to a small unit as compared to a unit of approximately 7,000 or a unit of 10,000 which Mr. Kennedy mentioned.

A Yes, sir, I think we enjoy some advantages as a small unit. I would first say one of the advantages is our participation with the parents and citizens that actually control the schools. We have much better participation than larger units, percentagewise. Of course, parents can get involved and do and very much easier than [67] they can in a larger situation.

Q Is that sometimes a headache for a superintendent?

A It can be! But after all, the schools belong to the people at home, and we encourage involvement. And it has been my experience that large systems have trouble involving many, many people; we can do it much easier. Percentagewise, students can participate in more activities. You have a larger percentage playing football, and you have a larger percentage of the student body in student activities, you have a larger percentage of the student body in social activities, you have more class officers percentagewise in students, cheerleaders, and everything else that students like to participate in. A

larger number of your students percentagewise are involved. And I think the biggest advantage to us is the instructional program. That's what we operate the schools for anyway. We like to think that the more individual attention we give a child, the more advantages the child will have. As a consequence we employ 18 additional teachers over and above what the state allots. It's purely for the purpose of reducing the teacher's load.

We pay a supplement to teachers from our local tax sources to recruit only teachers with A Certificates or better. We are able to maintain the Southern Association [68] of Accreditation for all schools.

Q All schools in your system?

A All schools in our system, primary through high school. I am sure I couldn't do this with too many children in too large a system. I can't see any way possible. I talk this over quite often with people who are having problems in larger systems who are working with the same thing. Sheer volume and numbers just overwhelm you when you undertake a few of these things that I consider advantages.

Q Since you have been there these fifteen years, has the Hendersonville city system become fully integrated?

A We must be in our fifth or sixth year, yes, sir.

Q And what advantages, if any, do you feel exist in a small unit in dealing with the problems of integration, if you do?

A As I mentioned earlier, more student participation in social activities as well as school activities; more readily to accept—and I don't know the correct term—more readily to accept integration or mixing socially at dances and school affairs where you have smaller numbers of pupils.

Q What do you attribute that to?

A I attribute it mostly to community involvement where parents know parents regardless of race, where [69] children know one another, and above all teachers know pupils by their names. They do not have to discipline pupils by saying, "Hey, you," or talking to them as a group but can call them by their names. I think we have better control over social affairs by that sort of

relationship. So I think the size there has some definite advantage.

MR. JOSEY: All right, sir. Your witness.

MR. KENNEDY: We have no question of this witness.

VERNON L. DUSSENBURY, called as a witness by the defendant Scotland Neck City Board of Education, having been duly sworn, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. JOSEY:

Q Give the Court your name, please, sir.

A Vernon L. Dussenbury.

Q Mr. Dussenbury, where—

MR. KENNEDY: Excuse me, if the Court will allow me, the last witness Mr. Randall also testified at some great length at the August hearing.

JUDGE LARKINS: That's what we are looking [70] at now.

MR. KENNEDY: Mr. Dussenbury also testified at the August hearing, and I wonder if this is not somewhat cumulative?

JUDGE BUTLER: Well, at the August hearing when Mr. Hugh Randall was called to the stand, it was announced that his testimony would be 95% cumulative.

Now, Mr. Dussenbury is with the Tryon City Schools, has 853 students, the smallest unit in the state, ranks near the top of the list in quality. He gets supplemental funds, local supplemental funds, for the students, and so forth.

We have a pretty good record of what they testified to.

MR. JOSEY: I merely tender him then, your Honor, if Mr. Kennedy has any questions.

MR. KENNEDY: No questions, sir.

JUDGE BUTLER: You may stand aside, Mr. Dussenbury.

JUDGE LARKINS: Call your next witness.

MR. JOSEY: Mr. Shields.

All of the City School Board of Scotland Neck come around, please, and be sworn.

[71] JUDGE BUTLER: Now call the names of these witnesses that are now being sworn, please.

MR. JOSEY: Mr. Frank Shields, Chairman of the School Board; Mrs. William Holloman, member of the school board; Mr. Walter Anderson, member of the school board; Mr. Al Burke, member of the school board; and Mr. Aubrey Powell, member of the school board.

JUDGE LARKINS: All right, administer the oath.

(Whereupon, the witnesses named above were duly sworn by the Clerk.)

MR. JOSEY: Mr. Shields, will you take the stand, please.

You other members, please, just have a seat there in the jury box.

FRANK P. SHIELDS, called as a witness by the defendant Scotland Neck City Board of Education, having been duly sworn, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. JOSEY:

Q I believe you are Mr. Frank P. Shields, and you are Chairman of the Scotland Neck City Board of Education; is that correct?

A Yes, sir.

[72] Q Now, Mr. Shields, I believe your deposition has been taken by the Government or the plaintiff in this action back in, oh, July of 1969; is that correct?

A Yes, sir.

MR. JOSEY: If your Honor please, I would like to announce at this time that we do not propose to go into anything here, but mainly two things that have occurred since that time.

JUDGE LARKINS: All right. When was that deposition taken, Mr. Kennedy?

MR. KENNEDY: July 24, 1969, your Honor.

JUDGE LARKINS: Very well. You may proceed.

BY MR. JOSEY:

Q Now, Mr. Shields, I show you here what purports to be a copy of the defendant Scotland Neck City Board of Education's FIRST FURTHER ANSWER that was filed sometime in September, I believe. Would you look at that, please, and be sure that is a copy of it.

A Yes.

Q Now, Mr. Shields, although that was not verified, it was filed by your attorneys. I'll ask you if in fact you and other members of the school board, prior to the time that this First Further Answer was filed, met and discussed this First Further Answer, and you and the school [73] board agreed that these were the facts, and that the representations made there were in fact true, and that you would abide by them; is that correct?

A Yes.

Q And that you stated there that, "Within the geographic boundaries of the Town of Scotland Neck there now reside approximately 751 students of school age; 56.86 percent of which are white and 43.14 percent of which are Negro." Aren't those the figures that this school board is cognizant of?

A Yes.

Q And you also stated there that, "The resident school population is sufficient to constitute an efficient separate school administrative unit, and the special tax funds will enable the Defendant to offer to its resident students an education system which is greatly superior to that heretofore enjoyed by them and superior to that which would be available to them if there were no such tax." And that, "Defendant made arrangements to operate such an improved school system in Scotland Neck for the school year 1969-1970." And you do now swear that that is the intention of the board, and that the board is cognizant of that fact?

A Yes.

Q And I'll ask you if this statement is true and [74] was discussed with the board and is still yours and the board's representation to the Court:

"It is the present intention of this Defendant, and this Defendant makes this continuing representation, that, if and when there is removed the temporary injunction barrier preventing operation under the Statute, Defendant will confine its student body to those students residing within the geographical limits of the Town of Scotland Neck, plus or minus such student transfers as may be in conformity to the law and/or Court order or orders applicable to Defendant, and in conformity to a plan of limitation of transfers to be prepared by Defendant and submitted to this Court."

I ask you if that wasn't in fact discussed with this board, and that the board agreed that that was what they are willing to represent to the Court and do so at this time?

A Yes.

Q And didn't you also ask that, "The Court retain jurisdiction of this cause for the receipt of a plan of transfer to be submitted by the Defendant," or the Scotland Neck City Board of Education, "to the Court and for the hearing of any objection that may be filed thereto"?

A Yes.

Q Didn't you also as a city board of education— [75] will your Honor give me just one minute?

JUDGE LARKINS: Yes, sir.

BY JUDGE LARKINS:

Q May I inquire, Mr. Shields, what is the capacity of the Scotland Neck facilities to which you say there is being projected an enrollment of 751 students?

A I couldn't say exactly, Judge Larkins, but there are now in attendance there about—somewhere between 830 and 850 students. And I would say it would accommodate up to—well, in the permanent classrooms probably 900.

JUDGE LARKINS: You may proceed.

BY MR. JOSEY:

Q I show you here the defendant Scotland Neck's Exhibit 4 and ask you if that is in fact a copy of a newspaper advertisement which you and the members of this school board ran for two separate weeks in the *Scotland Neck Commonwealth* in the early part of October of this year?

A Yes.

MR. KENNEDY: Your Honor, we have no objection to the authenticity. We admit the authenticity of all of these exhibits.

JUDGE BUTLER: Has that been marked and identified?

[76] MR. JOSEY: Yes, sir, it has already been introduced. This is just another—

JUDGE BUTLER: What is the exhibit number?

MR. JOSEY: No. 4.

JUDGE BUTLER: That's Defendant's Exhibit 4?

MR. JOSEY: Yes, sir.

Q What I would like to ask you is if in that advertisement did you notify the entire population of the Town of Scotland Neck that the district of this city administrative unit, the Scotland Neck School, "embraces all children of school age living in our Scotland Neck Community. It is contemplated by the Statute, it is required by law, it is the intent of this Board that every child living in this community shall be treated just the same, regardless of race, creed or color. There will be no segregation under our operation.

"The basic school population of our community would be approximately 57% white and 43% Negro. We do not know of any complaint which has ever been made anywhere of such a ratio.

"Transfers out of or into the Scotland Neck Schools would be made in accordance with a plan or plans of transfer to be prepared by our board and filed with the Court, in order that any objections to such plans could [77] be made to the Court and heard by it.

"Every operation of our Board would be in the plainest kind of spotlight, in the spotlight of public opinion and the spotlight of Court observation.

"It is the firm intent of our Board, and the firm intent of the people of Scotland Neck, to make our new School District work, to make ours an outstanding school, not a 'segregated school,' not an 'integrated school,' but just a school 'for all of our children without regard to race, creed or color.'

"It is our firm conviction that the successful operation of 'just a school' would be good for our community of Scotland Neck, good for our County of Halifax, good for our State and good for our Nation. The welfare of Scotland Neck, and possibly its survival, depends upon the success of just such a school."

Isn't that what you published in the paper, you and members of the board?

A Yes.

Q And is that your present intention, and do you represent that to the Court at this time under oath?

A Yes, that is my intention and as far as I understand it is the intention of every member of the board.

Q And all members are here with you at this time?

A All members are present.

[78] Q And what is your present appraisal of the sentiment in the community of Scotland Neck in accepting and operating the school as you and the board have set forth?

A I feel that the community wants it. I feel that they are willing to accept the plan as outlined. I think they are willing to support the school, and their purpose is that they want a better education for their children there in Scotland Neck.

MR. JOSEY: All right, sir. Your witness.

MR. KENNEDY: No questions, your Honor.

BY JUDGE LARKINS:

Q Did you receive any response to this?

A Yes, sir. It was an appeal for donation of funds to finance our fight here in court, and we have received a good response I think from it.

JUDGE LARKINS: Very well. Call your next witness.

MR. JOSEY: I would like at this time, your Honor to—

If these members of the board agree with what Mr. Shields has said, hold up your hand.

I would like for the record to show that each member of the board held up his hand.

I would like to tender those other four witnesses, the members of the Scotland Neck [79] School Board to this Court and to the Department of Justice.

MR. KENNEDY: No questions.

JUDGE BUTLER: Take a recess until 2:30.

AFTERNOON SESSION
Wednesday, Dec. 17, 1969

MR. JOSEY: That is the evidence for the defendant Scotland Neck City Board of Education, if your Honor please.

MR. KENNEDY: Your Honor, if I may be permitted to offer one witness in brief rebuttal for the Government.

JUDGE BUTLER: Very well, sir.

DR. ROBERT PITTILLO, called as a witness by the Government in rebuttal, having been duly sworn, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. KENNEDY:

Q Will you please state your name and occupation?

A Robert Albert Pittillo. I am Associate Professor of Education at Duke University.

Q Would you tell us something about your professional background, please?

[80] A I did all of my schooling in North Carolina. I began teaching in the little town of Battleboro in the eastern part of the state, and I taught for the Dependent Schools for seven years.

BY JUDGE BUTLER:

Q At what schools?

A Dependent Schools, Okinawa, Austria, Germany. I taught in Durham County. I was assistant superintendent for five and a half years in Raleigh, North Carolina; my job was Director of Instruction. And I was superintendent of schools, Lynchburg, Virginia, for a year and a half, and then I came to Duke University.

Q And do you hold your doctorate?

A Yes, sir.

Q Have you done most of your major work in school administration?

A Yes. My doctorate was in School Administration, and that is what I teach.

Q Are you familiar with the report of the Governor's Study Commission for the public school system in North Carolina?

A Yes, sir.

Q Were you a consultant to the commission?

A Yes.

Q Have you studied the sections in the Governor's [81] Study Commission Report? And for identification I am referring to Plaintiffs' Exhibit No. 11. Have you studied the sections in there on School Organization for Public Education?

A Yes.

Q Do you agree that the statements in there—Do you generally agree with the statements that are set out there with respect to recommended school organization for public education?

A Yes.

MR. JOSEY: I'm sorry. What section is that?

MR. KENNEDY: Section 3, I believe, Mr. Josey. Part 3—Organization for Public Education. It begins on Page 140.

Q Are you familiar with those sections in the report —and if you would like to refer to it, I can pass it to you —on the recommended minimum number of pupils recommended for a school system?

A Yes. Are you talking about the systems now?

Q Yes. School administrative units, yes, sir. I believe that section begins on Page 163 under Local School Organization.

A Yes. On Page 163 here it refers to a North Carolina State Education Report of 1948, and I am in agree-
[82] ment with that. This is a part of this.

Q I see. And on Page 164 carrying over to Page 166, do you agree with the nine factors of the Education Commission of the states which are listed there, 164 to 166?

A Yes.

Q Do you have an opinion as to the minimum size—minimum number of pupils in a high school that would enable a school system to offer a comprehensive education?

A Yes, I have.

Q What is that figure, sir?

A Well, I think—in my judgment it should be from 1,000 to 1,500 as nearly as possible.

Q Are we talking about a 4-grade high school?

A Yes, 9 through 12. Now, as near that as possible. I think with 750, a minimum of 750, it is economically feasible to have a reasonably comprehensive high school. The feasibility of it has to do with economics.

Q Has some of your professional background been concerned with the study of the feasibility and the cost effect of high schools of the minimum size of 750?

A Yes.

Q Can you very briefly tell the Court and us what you mean by a comprehensive high school?

A I think of a comprehensive high school as a school
[83] that offers all children a realistic opportunity for success in a worthwhile program. I'm talking about mentally retarded children, children who are classified generally as slow learners, as well as the academically able child. I'm speaking, too, of the child who will go to the university as well as the child who will go to the factory or the farm, as the case may be. I think of the comprehensive high school as offering the child a competitive education, not just competitive in his community, because we don't know where he is going to live, but so he can compete on a broad basis and work in whatever community he may wish or may choose to work in.

Q Do you have an opinion as to the recommended minimum number of courses that such a comprehensive high school ought to provide?

A Well, the authorities in this area tend to use some measures that I agree with in part, McClurkin being one from Peabody.

Q Is that Dr. W. D. McClurkin who is cited in the Governor's Study Commission Report?

A Yes. He says that it should be three times the number of courses required for graduation. I think that is too few. I would think in terms of numbers that you should offer 60 or more courses in a comprehensive high school. It ranges—in North Carolina I believe we have [84] one school that offers over 120 courses, according to the Governor's Study Commission Report.

Q Now, with respect to the minimum number of children in a school unit as set out in the Governor's Study Commission Report, do you know of any school of professional educational thought in this state that disagrees with that recommendation?

A Would you please state that question again?

Q Well, with respect to the minimum number of pupils that a school unit should have—and I think that Dr. McClurkin refers to 10,000 which the commission approves of—do you know of any school of educational thought or any educational experts in this state who disagree with that recommended minimum standard?

A Yes.

Q Who are they?

A Well, some of us—I have some friends who are professional acquaintances who are superintendents in small districts, and they don't agree with the 10,000. Generally speaking, the authorities who are writing in the field and teaching consider 10,000 as a minimum number for an efficient school district. If you have 10,000 to 25,000 or 30,000, you can operate an efficient school district in my judgment.

Q Are you also familiar with a survey done under [85] the auspices of the North Carolina Department of Public Instruction for the Halifax County unit in 1968?

A Yes.

Q Were you a member of that survey team?

A Yes, I was.

Q Were the recommendations for the interim plan contained in that survey made with a view to furthering or advancing the educational opportunities for all the children in the Halifax County unit?

A Yes. That was our unanimous feeling.

Q And did the recommendations in the interim plan foresee or drive at establishing two comprehensive high schools in Halifax County?

A Yes.

Q Is it not your opinion that this would increase the educational opportunities for the children?

A Unquestionably. Yes, sir.

Q Is there any recommendation at all in the plan that there be a smaller, separate school system created in Halifax County?

A No, sir.

Q Have you ever consulted with other school systems?

A Yes, I have.

Q About educational problems?

A Yes, sir.

[86] Q Have you ever recommended to them that there be separate small school systems created?

A No, I have not.

Q Dr. Pittillo, just to clarify one point, when you were referring to the 750 pupils as a minimum number for a feasible school, you were referring to a 4-grade high school, weren't you?

A Yes.

MR. KENNEDY: I have no further questions, your Honor.

JUDGE BUTLER: Excuse me one minute at this point.

BY JUDGE BUTLER:

Q It is my understanding that when you referred to 750 students for a 4-year high school, you used the words "economically feasible." Do you put any stress on the word "economically" as contrasted with other factors?

A Yes, sir, your Honor, because you can have a comprehensive high school of 50 students if you are willing to have one pupil in one class. But what I am talking about is having a broad range of opportunities for students, in languages and in all areas, vocational programs, your science programs, and operate at an optimum level so that you can maximize the efficiency of your teachers and the equipment you have in your building. That's what I [87] meant by this.

JUDGE BUTLER: All right, you may cross-examine.

CROSS-EXAMINATION

BY MR. JOSEY:

Q Now, Dr. Pittillo, you say you were a member of the group that made the survey for Halifax County in 1968?

A Yes, sir.

Q I believe that was probably presented to the board for the first time sometime in the middle of December 1968; is that correct?

A I don't know. I didn't participate in the presentation to the board. But as I recall, it was sometime in there.

Q And I believe the ultimate plan was to put two high schools in the county system, one up basically in the northwest section and one in the southeast section; is that correct?

A Yes, sir.

Q And the school in the southeast section, do you recall whether or not a location was determined for that?

A As I recall now, we were trying to locate it—we didn't look at the land or anything of this sort, but we just put it on the map in terms of where it would logically fit in terms of the students. We used population [88] distribution maps and this sort of thing, but we tried to center it reasonably within the center of the student population and geographically too.

Q I believe that was located generally in the Dawson community, do you recall, between Enfield and Scotland Neck somewhere in that area?

A That sounds reasonable, but I don't recall that.

Q And even if the Scotland Neck City unit were to be upheld and was to operate as a separate unit, I'll ask you if it isn't true that there would still be enough high school students—Enfield, Brawley, Inborden, and other high school students in the same area that you proposed to have a comprehensive high school in spite of Scotland Neck not being in that unit? Isn't that correct?

A I'm not sure. I would guess so, because as I recall—and I have not looked at the report except very briefly, one small section of it. As I recall, we were talking about approximately 1200 students there. I may be wrong. Now you are talking about removing 300, is that right—removing less than 300.

Q Yes, probably less than 300.

A You would have—I would judge in Scotland Neck you would have a little over 200 in grades 9 through 12.

Q And so that you would still have a number which you consider sufficient to have a comprehensive high school?

[89] A Yes, sir.

Q Now, isn't it true that the plan that you and—Strike that. Was Dr. Pierce on this committee with you?

A Yes, sir.

Q Of course, he had actually taught as a teacher and as a principal there in Scotland Neck some years ago; isn't that correct? Did you know that?

A I think I recall that now.

Q As a football coach and that sort of thing. Did you know that?

A You are refreshing my memory. I'm not sure.

Q But he was extremely familiar with the conditions in Halifax County; you knew that?

A Yes.

Q And the plan which you and Dr. Pierce and this group in the 1968 survey came up with required approximately $4.3 million in funds in order to accomplish the program of the two consolidated high schools; isn't that correct?

A Again you are pinning me down to numbers that I—if I could see the report, I could verify them. (Report handed to witness) What page is that on?

Q I'm not sure.

MR. KENNEDY: Your Honor, I think the report will speak for itself as to what was recommended there.

[90] JUDGE BUTLER: Well, it would be helpful if he could point it out.

MR. KENNEDY: If I may suggest that the witness turn to Page 13 at the top, there is a discusion there of financial organization.

A We saw an immediate need for two new secondary schools at the estimated cost of $4.2 million. These would be, in our view, truly comprehensive high schools offering a broad range of courses, academic, vocational, across the board, and programs for mentally retarded as well.

Q Now, what did you or your committee recommend as to how this money was going to be raised?

A Well, a part of it was in hand, as I recall, and the remainder would have to be raised by a bond issue.

Q The part of it that was in hand was about $800,000; isn't that correct?

A I think that's right.

Q So it was necessary to raise about $3.4 million?

A That sounds reasonable.

Q And of course that would require a special bond issue?

A Yes.

Q And your committee determined at that time with the bond indebtedness of the County of Halifax, that that [91] was more than the law would permit; isn't that correct?

A Well, if it's in here, it's correct. But I don't recall that. I thought that we stayed within the debt service limit.

Q And do you know or did you know that there are two other units, administrative units, in the County of Halifax?

A Yes, we took that into account.

Q And of course the entire county, including Roanoke Rapids and Weldon, would have to vote on this bond issue, wouldn't they?

A Yes, sir.

Q So that politically it would have had to have been a vote of the majority of the people of the entire county,

not just the ones in the residency of the Halifax school administrative unit?

A That's right. But the bond issue would not have to carry all three districts.

Q But don't you know that more than half of the voting population in Halifax County reside in Roanoke Rapids and Weldon?

A I didn't know that.

Q And of course you nor any member of your committee had any other suggestions as to how to raise this money: I mean there was no other money available as far as you knew [92] other than a bond issue in the county?

A I think that's right.

Q And you say that a high school that is properly, substantially financed can have a comprehensive program, but it takes more money per student, the overhead is greater, is basically what you are saying, isn't it?

A It's far greater in a very small school. As a matter of fact, the per-pupil cost may be double in some instances.

Q Well, do you know that under the Scotland Neck City administrative unit that the per capita expenditure of local funds will be more than doubled, do you know that, over what they are under the Halifax County system?

A The per-pupil expenditure?

Q Yes.

A The total per-pupil expenditure?

Q Of local funds.

A Oh, that's not what I was talking about when I said the per-pupil expenditure might be double in a very small high school. It might well double in a very small high school if you attempted to offer a comprehensive program. That's the total per-pupil expenditure.

BY JUDGE BUTLER:

Q When you say "a very small high school," could you give us some approximate figures as to the number of [93] pupils in the school in which the per capita expenditure would be doubled as contrasted with another specific size school?

A Your Honor, I couldn't be accurate on that, I'm sorry. But I would guess that when you drop below 300 in a 4-year high school that your per pupil expenditure, in order to offer such courses as physics, chemistry, and a broad range of advanced academic courses as well as vocational, that you would have classes of five or six students. You have eleven or twelve sometimes in a school of 800 or 900. And if, say, 16% of your student body is taking physics and you have 300 children—or if you have a class of a hundred, you would only have a physics class of 16, and that's twice as expensive on a teacher basis as a class of 32, though you wouldn't normally run a physics class of 32.

BY MR. JOSEY:

Q Now, Dr. Pittillo, isn't it true that a number of the smallest units in this state, such as Tryon, such as Hendersonville, rank substantially above, academically, a number of the units that are large such as 10,000 or 11,000 such as Halifax County, in many academic standards?

A I have not seen the comparisons that you are making, but I would guess that's reasonable.

Q And isn't it basically because of, maybe, the [94] additional funds that are poured into these smaller units by local supplements that they can from a practical standpoint raise in a small area?

A That could be part of it, yes. The clientele makes the difference too.

Q That is, the competency of the teachers, the competency of the superintendents, would certainly have something to do with that, wouldn't it?

A Yes. The total expert leadership that you could give to a district is extremely important in my judgment in the opportunities that the students have, and I don't think all of that expert leadership can come from one person.

Q But if you have more funds to hire people, you can normally speaking, generally speaking, get a better qualified and more competent individual, can't you?

A Yes, sir.

Q And of course teachers' supplements, superintendent supplements, payable from local funds is one of the inducements to enable these smaller units to get more competent persons?

A That is important. The kind of school that the teacher can teach in is extremely important.

Q Isn't it true that there are problems that are created or exist to a greater extent in a large unit, in [95] a large high school, that may not exist in a smaller more closely supervised high school today, particularly in the last five or six years?

A I'm not sure about that. I think where the problems—some of the greatest things that are being done in this state that I have witnessed this year in all these problems, and particularly integration problems, are being handled quite well in very large high schools or relatively large high schools of 1200 or 1500 students. But by the same token, you have had some difficulties in large schools.

MR. JOSEY: I believe that is all.

MR. KENNEDY: We have no further questions, your Honor.

* * * *

[104] (Whereupon, evidence was heard in Civil Action No. 1482, Raleigh Division, Turner, et al versus Warren County Board of Education, et al, and The Warrenton City Board of Education; the Littleton-Lake Gaston School District, et al.)

On Thursday, December 18, 1969, after the morning recess, Col. Joyner made the following argument on behalf of the Scotland Neck City Board of Education:

[105] JUDGE BUTLER: Colonel Joyner, you are now recognized for the purpose of the argument.

COL. JOYNER: Thank you sir. If it please the Court, let me say first that the defendant, Scotland Neck City Board of Education, is content with the record which we have made. We have no complaint there. We are ap-

preciative of the time which has been given us to argue this case, and I'll say that I would not have offered to speak at all and would not have requested as much time as forty minutes if I had not thought that this was a matter of tremendous importance and if I had not thought that what I would say would be of interest to the Court and of assistance to the Court in reaching a decision which may moderate some of the acrimony about schools and may be a step forward in reaching the result desired by the Supreme Court as expressed in the *Green* cases.

I am not going to burden the Court with much about the matters of evidence about the situation in Scotland Neck and the matters before the legislature. They are in the record. We will file a brief which will cover most of those points. I think it will cover most of the points that I am going to discuss; therefore, I doubt if it is necessary for the members of the Court to make notes unless there are some things that they wish specifically to record.

[106] This is an exceedingly unusual case. I have read many cases and I have never found one exactly like it. I don't know of any case on the books that so nearly fits into the pattern which seems to be required by the series of *Green* cases.

I am going to end up by stating my conclusion that the most favorable situs for curing the inertia or fears which defeated freedom of choice is the small community school with a nearly even racial balance and with widespread, enthusiastic community support will prove that Scotland Neck is a proving-ground for a realistic theory of tremendous importance.

The main thrust of my argument is an analysis of the series of *Green* cases, May 17 or 27, 1968. Those are the critical decisions governing the issue in this case, and I think that we must bring our case within those decisions.

The main thing that will be argued today will be not the question of school policy. We insist that that is a matter for legislative decision. The legislature has spoken on that: and whether it's wise or unwise to set up small school districts or to try to get very large, consolidated districts is a matter of State policy, and State policy must

be elastic and it must respond to conditions as they occur. And it could very well be that as [107] conditions exist today, racial conditions, rebellion conditions, conditions as to what should be put into a school and how much the school should be devoted to social activities and how much to work, they are matters that change and they are matters that may well justify action toward the establishment of small schools in local communities where the people—as Mr. Powell, the Negro member of the Scotland Neck Board says, "The people can have more influence on the schools. They can be felt." Mr. Powell moved back from New York, works in Rocky Mount, and lives in Scotland Neck, because he feels that he can work better and live better in a small community. That's one of the features of this case.

Now let me go very hurriedly over some of my notes, beginning before 1969. And I am going right straight to the main issue of this case. Before 1969 we thought that freedom of choice offered a fine settlement of the racial school issue. That's the only settlement that is a permanent, possible settlement, because it gives the freedom for which this Nation stands; and freedom of choice is the desired end, and we thought that that had disposed of the matter. But we found that that didn't dispose of the matter. And I'm not quarreling with what the Supreme Court did, but the Supreme Court in the *Green* cases went very deep, and I have never seen any [108] anlysis that goes quite as deep as I think this Court will have to go.

The Supreme Court said it is not sufficient to destroy and knock out the State law that requires segregation. That gives the opportunity. We thought that when you opened the doors of the school to anybody that would come in regardless of race, that that answered the *Brown* cases. That was the destruction of the legal barrier. As I understand the Supreme Court in the *Green* case, it said that the legal barrier which has been imposed in the past has left a structure which will have to be changed, and that structure that was caused because of that legal barrier is the Negro school and the white school; and the proof, as I understand the *Green* case, the proof that

freedom of choice has not worked is that after two or three years in the Virginia and Arkansas and Tennessee cases—there was the *Green* case and two other cases decided the same day—that where a lot of students had a choice, that the white students in the prior white schools did not shift to the Negro schools, and very, very few of the Negroes shifted to the white schools.

Now, in the *Green* case they said that what had been a Negro school and after freedom of choice was still 85% Negro, was still a Negro school. They said in [109] the *Raney* case the same thing. They said in the *Monroe* case that the same existed where there were only 80%. As a matter of fact, the words they used in the *Monroe* case was that with 80%, just something more than 80% remaining Negroes, it was still—and I quote—"completely a Negro school."

Now, what I am going to conclude with is that if this Statute is stricken down, you are not going to be able to have one single unitary school, because the percentage is going to be 80% or more Negroes in the county school district, and the only way you can have a unitary school in the county school district is to establish this as a unitary school. And this will be a model. But I am getting a little ahead of myself.

Let me go back to the *Green* case. The *Green* case says —and this is the final gist of what it says. It says the burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now. I want to underscore that. I think that is the key phrase.

There are in my opinion two turning points in this case. The first turning point occurred when the Scotland Neck City Board of Education filed its First Amended Answer after the August hearings. In the August hearings this Court had pointed to two things to which it [110] did not give its approval. Number 1: that approximately 300 white students had come in from outside the Scotland Neck districts and about 90 Negro students had gone out, and the Court was worried about what it called "a white refuge." It also was concerned about the tuition, the amount of the tuition. We took counsel on that

and filed the First Further Answer. We then ran a public advertisement signed by all of the members of the school board. And we have presented witnesses here who were accepted, and on these points were not asked a single question by the Government or by the Court. When they said that we propose to run a unitary school confined only to the residents of Scotland Neck, that will mean a unitary school with 57% white and 43% Negro; and we will confine transfers to those which may be according to a plan approved by the Court. So the handling of transfers, the handling of tuition, are matters within the Court's breast. And what we are talking about is an entirely different thing than we were talking about in August.

Incidentally, let me say that Mr. Kennedy was gracious enough yesterday afternoon to give me a 32-page Proposed Findings of Fact and Conclusions of Law and Proposed Order. I read it last night. It is a skillful document produced by able men. But in that total document there is not one reference to the First Further [111] Answer or to the advertisement that was run. There is not one reference to the placing of the transfers and tuition in the hands of the Court. As a matter of fact, that document would have this Court say—and except for time, I would point the paragraphs out, but I haven't got time. That document would have this Court say—and he's speaking as of today—would have this Court say that the Statute would siphon off approximately one-third of the white students in the Halifax County School District. That would mean that it would siphon off approximately 750 or 800 students. Now, that's speaking in terms of August. That's not speaking in terms of December. And he would have this Court say just that in his Findings, and he completely ignored that one turning point.

The other turning point is the *Green* case. Now, bear in mind that the Court had said that those schools did not meet the criteria of unitary schools, because they were still completely Negro schools. Now, they say that a plan that is proposed must promise realistically to work, and promise realistically to work now. Now, that is said by the Supreme Court of the United States. In

the first place I am not going to permit myself to believe that that Court said something that it did not believe, and in the next place I know that that Court is exceedingly skilled in the use of words. Now, what does [112] "realistically" mean? As defined in an Oxford Dictionary, an old one, realism is, quote, "Dealing with things as they are." Webster: "Realism is preoccupation with fact or reality and rejection of the impractical and the visionary." So the Supreme Court has said to deal with things as they are and to discard the impractical and the visionary. And I propose, if I can do so, to argue this case realistically and not theoretically.

But let's look at the *Green* case. The *Green* case said that when freedom of choice did not work. It didn't analyze completely, but it did have a statement in there that very plainly indicated the reasons they thought it had not worked. And that is what I would pray that this Court consider and think about very deeply. Why didn't freedom of choice work? It didn't work in the three cases in the *Green* case; it didn't work in Scotland Neck, because we came up after three years of freedom of choice and we had less than 10% Negroes in the Scotland Neck School. And the *Green* case very plainly says and refers —and we will refer to that in the brief and give the page citation—that only those Negro parents or only those Negro students had transferred who were courageous enough, and I underscore the word "courageous"—courageous enough to go against the established precedent, the precedent established under long compelled segregation.

[113] In the opinion in the *Green* case there is a footnote which gives about half a page copying a report from the Department of Health, Education, and Welfare in which they assign alleged reasons why the children did not exercise freedom of choice: because freedom of choice failed—and that's obvious; I didn't think it was necessary to say that—because the children or their parents, the parents of the Negro children, did not see fit to take advantage of the opportunity, and the white parents and children did not take advantage of the opportunity to shift to a Negro school. So it was a ques-

tion of choice. And in this listing as a footnote in the *Green* case, the first reason is fear—fear of retaliation.

Now, what we are now dealing with is not a question of law, it's not a question of fact; it's a question of attitude. Freedom of choice failed because of attitude, and it failed because of the attitude which was certainly impelled by fear to some extent, required courage, and a large degree of inertia was present. And, therefore, the only thing that you can say toward which the *Green* case is directed, is a change of attitude. What is needed is a convincing frame of mind, a frame of mind in the Negroes convinced that they can attend a truly mixed school, a unitary school, and they can attend it in peace and contentment and with educational profit. That must be [114] the attitude toward which the *Green* case is directed. And the white students must have the same attitude that they can attend unitary schools, mixed schools, and they can attend with safety and contentment and with educational profit.

Now, what the *Green* case says to me is that that attitude is what caused freedom of choice to fail; and in order to permit freedom of choice to succeed, that attitude must be changed. And if and when that attitude—I'll strike out the "if," because we can't contemplate the horror of a situation where that attitude isn't changed. When that attitude is changed, then freedom of choice can be restored and this Country can again be a free Country, and parents and children will be free to exercise their own option.

We are caught now in an inconsistent situation. In a country where freedom is our motto and where everybody is crying "Freedom," we are denying children freedom of choice. Now, I'm not complaining about it; I'm not saying that the *Green* case isn't sound when it said that the cause of the failure is attitude, that the children were lacking courage to take advantage of their opportunity. But we must change that attitude. Now, how are you going to change an attitude? You can't change an attitude with a sledge hammer or with an injunction. You've [115] got to change something in the mind. You can change an attitude only by starting to work with

individuals. And when you work with individuals, that means people, persons, living in a community.

Now, what is possible in this case? How can you get a change of attitude in Halifax County which will lead the Negroes to be content to go to mixed schools and lead the white children content to go to mixed schools? Well, I say the only way you can change the attitude is by trying it. And how are you going to try it? Well, the best way to try it and the best place to try it is in a school where the races are nearly equally mixed. If they are not mixed, then you haven't had a real demonstration of the ability of the Negro children and the white children to get along together. Because if you've got in the neighborhood of 75% to 80% white, you've got a white school, you haven't got a unitary school. If you've got 75% or 80% Negro, you've got a Negro school. So I say that the best place to start to change that attitude and to take the desired step forward is in a small community.

I refer again to some language in the *Green* case. The *Green* case says in substance that where freedom of choice has not worked—and bear in mind in the *Green* case they had one big white school here and another big Negro school there—where freedom of choice has not worked, [116] a look must be had to other expedients such as zoning. Well, that's precisely what we are doing here—zoning. We are taking a county where it would be impossible to establish anything except predominantly Negro schools. That is the County Board situation—78% Negro. And there has been a zoning which has been confined to the city limits of Scotland Neck, and it applies only to the children living and raised in that community; and the result of that zoning is the remarkable situation that hasn't existed in any case that I have seen of almost a perfect ratio for demonstration of the lack of the need for fear. Now, you not only have that perfect situation there, but you've got a very unusual community. I know of no case that has come up with the proof of what Scotland Neck has as a community, and that is a community that is determined to make this work. The community is behind this effort. It's up

to Scotland Neck to prove to Halifax County, to prove to the State, that in an eastern county in Eastern North Carolina you can have a successful, harmonious mixed school with the ratio nearly even. And they are determined to make it work, they are determined to maintain the contact between the parents and the teachers and the administration and the students; they can preserve order. I'm not saying it will work, I don't know whether it will or not. But I am saying this: I am saying that under the [117] conditions that are proven, looking at them realistically, you've got a better chance of demonstrating the feasibility of a mixed school in Eastern North Carolina than you would have in any other possible arrangement in the Halifax County School Board of Education territory.

Now, I said I felt the duty to myself and to my client and to this Court to argue this case realistically. Now, what are the realistics? What is realism about what's going to happen if this Statute is stricken? The record is replete with evidence, deplorable, to be deplored, but almost sure to happen that there will be a mass movement of white students from Scotland Neck to private schools; such a mass movement that your percentage in the county of white students will be lowered. And you are going to come out—if this is stricken down, and you try to have mixed schools in that Halifax area, you are going to come out almost certainly with a ratio greater than 80% which the Supreme Court has said are all-Negro schools, and you will not have any satisfactory demonstration in that area and in that county that white students and Negro students can go together peacefully and with contentment and with pride.

Now, I deplore that situation; the people of Scotland Neck deplore that situation. The evidence is replete that one of the objectives in the passage of this [118] Statute. —this comes from Mr. Harrison, it comes from the Chairman of the Board. One of the objectives was to forestall the movement which has already started toward private schools. Now, I don't think it needs any proof. I think that the members of this Court are thoroughly familiar with the extent of that movement. It's going

on everywhere. I'm not saying that there isn't a place in our system for private schools; I think there is; but the place primarily is for unusual children, either extraordinarily brilliant or extraordinarily slow. There is a place for private schools. But if the private schools suddenly grow and grow as it now appears that they are going to grow, then the public schools in North Carolina are going to be practically destroyed. That's the dilemma that this Court faces.

There has already been—it's in our newspaper articles, and the Court knows it: There has already been a very decided tendency on the part of people throughout this State to vote against school taxes. If you look at it realistically, they take the attitude that they are fed up with public schools run by the United States Government or the United States Courts. You recently saw a vital bond issue in Wilson County utterly defeated; you have seen a bond issue in Wake County and the City of Raleigh that was of vital importance, and neither board of [119] education has the courage to submit it to a public vote now.

The private school situation is a dreadful alternative, but it's one. Now, the Government in its argument, in it's brief, says that according to law you cannot retard integration because of the threat of private schools, and passes it off that way as though the problem wasn't here. But the Supreme Court says "realistically," and says that the plan must promise realistically to work now. You can't have a plan unless you do consider the private schools. And what I am saying is that with this Scotland Neck plan, you've got the potential of the only demonstration which the *Green* case says must be had in order to remove those fears that have prevented or have caused freedom of choice to fail; and this is the only chance they've got.

There were a lot of other things that I wanted to cover, but I am about through. You have been very patient, and I am beginning to tire. I have already commented on the turn of this case when the First Further Answer was filed, in which we said, Here is a unitary unit and that expansion may be only as the Court may

approve. I have already commented on the fact that the Government has blinked that fact and in its 32-page brief hasn't even referred to either the First Further Answer, to the [120] advertisement that was run, or to that chairman that was on that stand, Mr. Shields, or to those four school board members over there. I do call attention to the fact with respect to Mr. Shield's testimony and with the other members, including the Negro member Mr. Powell, who voted by raised hands that they concurred in Mr. Shield's testimony, the Government asked them not one single question. Does that mean that the Government isn't interested in the local community, is not interested in the local conditions, is not interested in the community support, is not interested in the objectives of a school committee? And I might say —and I say this not with apology, but with reservations —that I think the Court was convinced of what they said. The Court asked them not one question, except one question as to the capacity of the school, as I recall it.

I also comment on the fact that, although you have a tremendous document about the intervention before you, we have proceeded through the injunction hearing, we have proceeded through this hearing, and the Government hasn't called a single Negro resident of Scotland Neck or a single Negro resident of Halifax County to the stand in the Scotland Neck case. Now, we had one. We put Mr. Powell on the stand. We swore him in and had him testify by raised hand that he agreed with Mr. Shields. [121] The Government asked Mr. Powell not one single question.

Now, I am about through, but I do want to say this: If you are realistic—and you must be realistic; the Supreme Court has said you must, and reason and logic and justice says that you must—you've got to look at this Scotland Neck community. I think this evidence shows, and the depositions show, that you have an unusual community in Scotland Neck. I think the evidence shows that their views, I think, are the right views. They recognize that the future of this Country, and certainly the future of Scotland Neck, depends upon cooperation and understanding and good relations between

the Negroes and the whites. They know that the whites in Scotland Neck need the Negroes. The Negroes in Scotland Neck know that they need the whites. Both races need the high degree of self respect, mutual respect and cooperation; and we offer here and now to prove it in Scotland Neck. As I say, I don't know what the result will be, but I say that you've got a better chance of proving the undoing—and I'm glad to say the courts have stopped talking about integration. They have started talking now about the "undoing of the relics of State-imposed segregation." And you've got the best chance here of undoing those relics than you have had in any place that I have known of, and that you can have in Eastern North Carolina. I have a very great deal of deep feeling about [122] that. I married a girl who was from a Scotland Neck family, and for 34 years I spent some of the happiest days of my life there. They are my people. I have danced at their weddings and have helped them bury their dead. And I implore you to give them a chance.

This Court, I say, has a tremondous opportunity and a dreadful responsibility. You have the opportunity of taking a step forward toward good relations, a step toward removing the remnants of State-imposed segregation, removing the fear on the part of students to shift or to go to mixed schools. You've also got the dreadful danger that if this Statute is stricken down, the people of Scotland Neck and the people of North Carolina are going to be so disappointed and so frustrated that the racial relations will not be improved; they will be greatly worsened. And because of the knowledge of this Court, of North Carolina and its people, that total responsibility rests on just two district judges. It doesn't rest on the Circuit Court of Appeals, it doesn't rest on the Supreme Court of the United States; because you know the people, you know the conditions. And I say to you that I am convinced that a decision upholding this Statute would not only be a great step in the improvement of racial relations, which is absolutely necessary in our whole Country; not only a good step in that direction, but [123] it would relieve this Court of a great burden and

would make its path easier in the administration of the law.

Thank you very much for your kind attention.

JUDGE BUTLER: Col. Joyner, this Court, as you are aware, feels the burden of its responsibility in this case as well as in other similar cases, very keenly. Judge Larkins and I have some dozen or more of these cases involving, of course, different situations, different counties, different ratios. When we come to geographical zoning within counties, we have zones that reflect different ratios. And it is of great concern to the judges who bear the responsibility for the decisions.

Now, we have the responsibility to try, as best we can, to apply the constitutional principles as we understand them.

Now, we have been discussing largely the result of this Act with respect to a certain area surrounding Scotland Neck and the resident students within that area. Now, what effect would upholding the constitutionality of this Act have upon other students within the confines of Halifax County for whom this Court must, of course, give the same consideration? What are the results to the other students and the educational system in the remaining portion of the county?

[124] COL. JOYNER: Well, I have very strong opinion on that. I have the opinion that the thing that all of the students in the Halifax County school distirct need most is the demonstration to them that Negro students and white students can get along peaceably and profitably in a school, and that you cannot have that demonstration except by this special school district.

I think it would have this effect: I think that if it succeeds—and it's got the best chance of succeeding of any other mixed school—if it succeeds, the other children in Scotland Neck in the other schools, where there are 80% Negroes and 20% white, will be spurred on by the observation of the success in the Scotland Neck School. I think the white students will be more content to go to the predominantly Negro schools. I think the Negro students will be more tolerant of the white students because of what they see in Scotland Neck. I think the

people in the county will be more willing to continue to live in the county. And I think this, your Honor: I think that other people, other white people if you please, will be willing to move into the county. And if you don't do something to stop the flight of white students to private schools, you are going to have a situation just like you have in Washington, D. C. And I think it would improve the [125] atmosphere throughout the whole county. It would show them that the United States Government is interested in dealing realistically with a problem in approving a demonstration that the two races can work together. And I think it would have a very beneficial effect. I think, on the other hand—and now I am just repeating myself—if you don't do that, it is going to have a very bad effect. I don't think there is any question but that a mass movement of white students from a predominantly Negro school in a Negro county is going to stop the growth of that county. It's going to almost destroy their public schools, and people are not going to move into the county. I think the fate of the county hangs on this decision.

JUDGE LARKINS: May I supplement what Judge Butler said in his inquiry? You may not be aware of it, but at the conclusion of this case, I have set a hearing for the Halifax County Board of Education upon its plan which has been submitted which follows the recommendations of the State School Survey Plan which was filed December 1, 1968. Among the papers which were submitted to me is correspondence between Mr. Lunsford Crew, Senator Crew, representing the county, and the State School Survey team, in which he asks them to reexamine the recommended interim plan of December 1, 1968, and bring it up to date; and he was successful in getting a very prompt reply, which [126] is in the record. He has attached to the proposed plan a map of Halifax County which will show the projected school population in the various schools in the county, many of which result percentagewise 98% black and 3% white. This plan was approved by the Government at the pretrial conference which you attended in my office when Mr. Kennedy announced that this plan was then acceptable, and this is the plan which the board has now,

I would say reluctantly, submitted to the Court, but it is at least the plan that has met the approval of the Department of Justice.

Now, following what Judge Butler says, if you look at this map that Mr. Crew has attached to the plan which shows the results of it, to uphold the Act creating the Scotland Neck School District and confining it to the geographic confines of the town, would result in a greater disproportion than if it were not adopted. Because you will find that immediately on the outside where some family may live, as I can conceive, a family living right outside the confines of the town whose eaves might drip over into the town would be deprived of admission into the Scotland Neck School and may have to go many miles distance to a school unless, as you propose, this Court take each application for admission and pass upon them, which would be very burdensome.

[127] COL. JOYNER: No. Our suggestion is a plan to be submitted to the Court, and the Court then could provide general regulations which would prevent such distortion as the Court desired to prevent. You could limit the transfers. And about the question of the Scotland Neck plans, if the Court should approve the constitutionality of this Statute, I doubt if Scotland Neck could get into operation before September. Now, that I don't know, but that would be my idea. And the striking down of this Statute is going to increase the ratio of Negroes, unquestionably, because there are going to be a great many white students that will leave Scotland Neck and possibly other parts of the county, but I'm speaking of Scotland Neck. And I think involved here is the preservation of the public schools and the preservation of the city and the preservation of the county. I think you are going down the drain if your schools go down the drain.

JUDGE BUTLER: Have you given any consideration to the schools in Halifax County outside of the Scotland Neck city administrative unit?

COL. JOYNER: I thought I had talked about them a great deal. I have given a lot of consideration to it. I think that they will be no worse off proportionately,

and they will be much better off if they see a mixed school [128] set up in Scotland Neck and working.

JUDGE BUTLER: In other words, the example which you say would be set by this harmonious relationship within this administrative unit would benefit the county from a psychological standpoint?

COL. JOYNER: Yes, sir, it certainly would. It would help to remove the one thing which has caused freedom of choice to fail, and that is fear.

JUDGE LARKINS: Well, wouldn't that be predicated upon the some 250-odd Negro students who now reside within the confines of the Town of Scotland Neck staying in?

COL. JOYNER: It contemplates that very definitely.

JUDGE LARKINS: Have you through Mr. Powell had any assurance that these parents and children would be satisfied with that?

COL. JOYNER: Your Honor, I am reasonably sure they would not be satisfied, because they want to continue to go to an all-Negro school. Now, I say that is just exactly what the unanimous court in the *Green* case said; that if freedom of choice doesn't work—and it hasn't worked, because the Negroes haven't transferred to Scotland Neck—if freedom of choice doesn't work, you may have to go to some plan such as zoning. Now, when you go [129] to zoning, as I understand what they meant by going to zoning, you draw an area and you say, Now, all the children in that area must go to the schools in that area, which incidentally I think is the best thing that can happen to students—to go to school where they live. But I undoubtedly think that to start with there are a lot of Negro parents that won't be satisfied. I know there are a lot of white parents that won't be satisfied. But I am saying that the Scotland Neck community is prepared to help work down those satisfactions and have a truly unitary school that will promise realistically to work now. And I say that's the only way you are going to get it.

JUDGE LARKINS: Well, let me refer you to the proposed plan which I will hear, I hope sometime today or at least tomorrow; and this is the State School Sur-

vey Plan which was submitted a year ago but which has now been projected. It may be subject to some change. But here's what I direct your attention to. Let me only inject this: that if the plan is acceptable—and the Department of Justice announced in October that it was—the Scotland Neck Schools would be the tenth through the twelfth grades with 482 Negroes, 198 whites, with a capacity of 675, and transfers total 680. So you have the exact capacity to take care of them. Brawley, one through nine, you would [130] have—now, of course, these are projected figures—304 Negroes, 284 whites, for a capacity of 944 with transfers and assignments of 907. So you would have full capacity. In the ninth grade there would be the greatest disproportionment with 252 Negroes and 67 whites.

Now, this proposed plan would encompass not only all of Scotland Neck, but Brawley and the Bakers School which would be some distance east outside of Scotland Neck. But in this proposed plan Bakers, one through eight, would have 357 Negroes and only 9 whites. And on the other side of the outside of Scotland Neck you would have Dawson just to the west, grades one through eight, with 388 Negroes and 60 white. So regardless of what happens to Scotland Neck, immediately to the east and immediately to the west you are going to have almost a 90-10 ratio in Dawson and worse than that at Bakers with 357 to 9. And as you move on out in the county, about the only one that I can find where your theory as you advance it would be Aurelian Springs, 250 to 377.

So as Judge Butler has indicated, what's going to happen to the children in the remainder of the county if this Scotland Neck Bill is found to be constitutional and stands, affecting only the children who happen to be fortunate enough to reside—their parents—in the Town of Scotland Neck?.

[131] COL. JOYNER: I think I am repeating myself now, your Honor, but I think that what will happen, if you look at it realistically, is only good. I think that the declaring of this Statute constitutional is not going to impair the percentage of white students attending the

schools in the district outside of Scotland Neck. I think it is not going to impair that. Because I think if you declare it unconstitutional, many of those students are not going. I think that it can't hurt them, and I think it may help them very much to have a neighboring place where they can see members of both races working together harmoniously. And that's what we are really striving for.

JUDGE LARKINS: I didn't want to belabor you with this. But percentagewise you would have about the same relation here with the Brawley and Scotland Neck schools under this plan as you would have in the Town of Scotland Neck.

COL. JOYNER: No, sir. In the first place, where you've got a much higher relationship than Scotland Neck's, you've got two other very great drawbacks. You've got several very great drawbacks. In the first place, you've got the drawback of artificially busing students out of the Scotland Neck area into another area for the purpose of creating a ratio. And you are artificially [132] busing students into Scotland Neck. In the second place, you are not going to have those ratios. I think if you are realistic about it, you can look at the counties that have private schools, and you can look at the record in this case and you know that many of those white students that are carried from Scotland Neck to the neighboring Negro schools are going to private schools. In the third place—and I think probably this is the most important—you are not going to have the determination in the Scotland Neck area or in the other areas of the parents and of all of the citizens to make the plan work.

(Whereupon, a recess was taken from 1:00 P. M. until 2:00 P. M.)

[Caption Omitted]

MEMORANDUM OPINION AND ORDER

LARKINS, District Judge:

This cause came before the Court upon the filing of the plaintiff's complaint on June 16, 1969 attacking the constitutionality of Chapter 31 of the North Carolina Session Laws of 1969, a local act which carved out of the Halifax County, North Carolina school system a separate administrative unit for the operation of the schools in Scotland Neck, North Carolina. In its complaint, the plaintiff also challenge the constitutionality of defendant Halifax County Board of Education's pupil assignment plan on the grounds that the plan failed to establish a unitary nonracial school system as required by the mandate of the United States Supreme Court.

Now before this Court for its consideration is a Motion for Leave to Intervene filed by Pattie Black Cotton, Edward M. Francis and others, two public school teachers in Halifax County and a number of minor school children of the Scotland Neck City School System and the Littleton-Lake Gaston School System on behalf of themselves and all other black or Negro public school teachers, parents and students similarly situated. The intervenors, for reasons known only to themselves, waited until the morning of December 17, 1969, the day on which this Court had scheduled a trial on the merits of the constitutional questions presented in this action, to file their motion. They name as parties the original defendants and the following proposed additional defendants: Mr. W. Henry Overman, Superintendent of the Halifax County Schools; the Board of Commissioners of Halifax County, a public body corporate; the Scotland Neck City Board of Education, a public body corporate, and Franklin B. Bailey, Superintendent of the Scotland Neck City Schools; the Littleton-Lake Gaston School District, a public body corporate, and Russell N. Manning, Superintendent of the Littleton-Lake Gaston School District; and the North Carolina State Board of Education, a public body cor-

porate, and Dr. Craig Phillips, North Carolina State Superintendent of Public Instruction.

In their motion, the intervenors show the Court that the contentions in their complaint have questions of law and fact in common with the contentions of the plaintiff in this action and that the relief sought could be granted as part of the relief given the original plaintiff. They also show that the United States as plaintiff has not set forth certain available grounds for complaint that occurred subsequent to the filing of the complaint. The motion also states that the prospective intervenors opposed the passage of the local acts creating separate school districts in Halifax and Warren Counties and that they now desire to show the racial motivations behind the passage of those acts.

In their proposed 32-page complaint the intervenors seek injunctive relief against the operation of the separate administrative units and against the assignment of students and faculty on the basis of color along the same lines as prayed for in the original complaint filed by the United States. They also seek to have the black teachers treated in accord with a national Code of Ethics adopted by the National Education Association and seek injunctive relief against the termination of contracts and certain operational and curriculum changes. They wish to have declared unconstitutional the local acts passed by the North Carolina legislature and the alleged policy of punishing black teachers who take disciplinary action against white students.

The intervenors also show the Court that Pattie Black Cotton, a Negro teacher, has been subjected to charges which "have created doubt and uncertainty as to (her) professional, legal and ethical rights." Specifically, it is alleged that she was subjected to criminal sanctions for assaulting a white student with a ruler and was required to appear at a hearing which would determine whether she would be entitled to continue her employment. It is also alleged that a white teacher testified at this hearing in violation of the professional Code of Ethics.

The complaint also states that the plaintiff Edward M. Francis, a Negro, was a Trade and Industrial teacher in

the Town of Scotland Neck from 1967 until June 3, 1969, at which time his employment was terminated because of the creation of the Scotland Neck administrative unit and the consequent elimination of certain trade courses from the curriculum of the Scotland Neck schools. The Halifax County school system is still operating the school but has failed to re-employ the prospective plaintiff.

The complaint additionally defines the positions of the proposed defendants and states the alleged grounds upon which they should be made parties to the action. There is also a lengthy discussion on the background and circumstances surrounding the passage of the local acts which created the separate administrative units.

At the hearing on the constitutional issues on December 18, 1969, this Court requested that Mr. James R. Walker, Jr., counsel for the intervenors submit a concise statement in which he set forth the reasons for which he sought intervention and why the interests of the prospective intervenors were not being adequately represented by the United States. On December 19, 1969, counsel filed a two-page document entitled "Further Contentions For Intervention" which essentially summarized some of the contentions in the complaint and stated that the intervenors had additional information that had not been brought to the attention of the Court, that the intervention would not be a burden since the factual allegations are matters of record, that the questions raised by Pattie B. Cotton may be deferred as a separate matter and that the applicants for intervention are persons affected by the Court's decision and are persons who must help implement any decision the Court might make.

On December 19, 1969, during a hearing on the proposed plan of desegregation submitted by the Halifax County Board of Education this Court read into the record the "Further Contentions" submitted by counsel for the prospective intervenors and directed that responses to the Motion for Leave to Intervene and the "Further Contentions" be filed by Tuesday, December 22, 1969. The Court received responses as follows: On December 22nd, the Court received the response of the North Carolina State Board of Education and Dr. A. Craig Phillips; on

December 23rd, the Court received the response of the Halifax County Board of Education, the Intervenors Reply to Objections to Intervention and a telephone call from counsel for the Board of Commissioners of Halifax County requesting an extension until January 1, 1970, in which to respond to the motion; on December 24th, the Court received the response of the Scotland Neck City Board of Education; on December 26th, the Court received a Memorandum in Opposition from counsel for the United States. After consideration of the pleadings, the Court set oral argument on the objections to the proposed intervention to be heard on Friday, January 2, 1970, at 12:00 noon in Chambers at Trenton, North Carolina, and directed the Clerk to send notices to that effect to all parties and counsel of record.

The essence of the objections on the part of those parties opposing the intervention is that the motion is not timely and that the interests of those seeking intervention are being adequately represented by the United States as plaintiff. The opponents cite Rule 24 of the Federal Rules of Civil Procedure relating to intervention. They also suggest that there are no questions of law or fact in common with those of this action with respect to those aspects of the proposed complaint in intervention which deal with issues not already presented in the action. The opponents further argue that to permit intervention would cause undue delay and prejudice to the existing parties in that the intervenors had the information necessary for the preparation of their motion several months prior to the time they actually filed it and yet waited until the day on which the Court was commencing the trial on the merits to present their claims. The memorandum submitted by the United States suggests that the contentions relating to certain individual faculty members or former faculty members are the only ones on which the proposed plaintiffs are not now receiving adequate representation and that these contentions present no immediate problems. Therefore, suggests the Government, these contentions could be taken under advisement without necessitating a delay in this Court's rendering a decision on the desegregation and constitutional aspects of the case.

In rebuttal, the proponents of the intervention contend that delay is not a valid reason for denying intervention since the case has been pending only six months and the other matters could be decided immediately without denying intervention. They suggest that they are necessary parties and the real parties in interest and point out that they are seeking relief and damages not prayed for in the original complaint.

At the hearing on January 2nd, this Court was informed that notices had been sent to all parties and counsel of record except Mr. William McLean, attorney for the Littleton-Lake Gaston School District. The Court directed that he be served with the motion and the complaint in intervention and that he be given five days from January 2nd in which to file a response. The Court talked with Mr. McLean by telephone on January 7th and was informed that a response had been deposited in the mails on January 6th. The response was received on January 8th at which time the matter became ready for this Court's ruling.

After a full consideration of the pleadings and oral argument of counsel, this Court concludes that the proposed complaint in intervention does raise some questions with respect to the status of some faculty members that were not raised in the original complaint and that should properly be considered as relevant to this action. The Court also feels that to allow the intervention would not unduly prejudice the rights of the other parties to this action. Therefore, the Motion for Leave to Intervene shall be allowed.

ORDER

NOW THEREFORE, in accordance with the foregoing, it is:

ORDERED that the Motion for Leave to Intervene be, and the same hereby is, allowed;

FURTHED ORDERED that the original defendants and the additional defendants named in the complaint in intervention are hereby ordered to answer or otherwise plead within 20 days in accordance with Rule 12 of the Federal Rules of Civil Procedure;

FURTHER ORDERED that the Clerk shall serve a copy of this MEMORANDUM OPINION AND ORDER upon all counsel of record.

Let this ORDER be entered forthwith.

/s/ [Illegible]
[Illegible]
United States District Judge

TRENTON, NORTH CAROLINA
January 9th, 1970

[Caption Omitted]

COMPLAINT IN INTERVENTION

FIRST COUNT

1.

That the Intervening Plaintiffs admit each and all of the allegations of the Original Complaint herein and adopt the same as if herein made and in addition thereto, the Plaintiffs allege as follows:

JURISDICTION

2. The jurisdiction of the Court is invoked pursuant to Title 28 U.S.C., Section 1342, this being a suit in equity authorized by law, Title 42 U.S.C. Sections 1981 and 1983, to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a State of rights, privileges and immunities secured by the Constitution and laws of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Jurisdiction of the Court is also invoked under Title 28, United States Code, Sections 2201 and 2202, this being a suit for a Declaratory Judgment declaring the rights privileges and immunities and the unconstitutionality of State statutes and actions as will hereinafter appear.

3. This is a proceeding for a temporary restraining order and a permanent injunction as follows;

1. enjoining the Halifax County Board of Education, the Littleton-Lake Gaston School District, the Scotland Neck City Board of Education and their members and their Superintendents from issuing or enforcing any order or directive individually or in concert, requiring the plaintiff-students or any other students similarly situated, to attend any school or submit to any school administrative unit other than

the Halifax County Board of Education and schools operated by the Halifax County Board of Education and,

2. enjoining the Halifax County Board of Education and its members and Superintendent and all other persons acting in concert or participation with them or at their direction from continuing the policy, practice, custom and usage of discriminating against the plaintiff-students and teachers and members of their class because of race or color, in the assignment of students and teachers and in the hiring, assigning, dismissing or refusing to hire teachers and other school personnel in the Halifax County School Administrative Unit on the basis of race or color.

3. Enjoining the Halifax County Board of Education from condoning, encouraging, accomodating or acting in concert with white parents and teachers in denying to Negro or black teachers in integrated schools, the ethical treatment and professional respect and regard for professional rights and responsibilities as accorded white teachers and as required to be accorded to all teachers by the standards of the Code of Ethics of the Education Profession as adopted by the National Education Association, and

4. Enjoining the Halifax County Board of Education from terminating teaching contracts or refusing to rehire teachers based upon the creation of the Scotland Neck and the Littleton-Lake Gaston School Districts hereinafter complained of.

5. Enjoining the Halifax County Board of Education from refusing to offer Trade and Industrial Courses previously offered and terminated as a result of the creation of the new school districts in Halifax County as hereinafter complained of.

6. Enjoining the Halifax County Board of Education from ceasing to control and operate any of the schools or school plants previously operated and needed by the county for the operation of its schools and conveyed to the new school districts solely because of the needs of the newly created school districts.

And this is a proceeding for a Declaratory Judgment declaring the following:

a. The Act of the North Carolina General Assembly, Chapter 31, 1969 Sessions Laws, creating the Scotland Neck City Board of Education and Administrative Unit, void and unconstitutional for reasons hereinafter given.

b. The Act of the North Carolina General Assembly, Chapter 628, 1969 Sessions Laws, creating the Littleton-Lake Gaston School District and Administrative Unit, void and unconstitutional for reasons hereinafter given.

c. That any legislative act which achieves its purpose of creating school district lines drawn in such a manner as to include the largest number of white students and to exclude the largest number of black or Negro students as an legislative effort to encourage and foster continued segregation on the basis of race or color in the operation of the public school of North Carolina, is void and unconstitutional.

d. That the Act and actions of the Scotland Neck City Board of Education and the Halifax County Board of Education and the North Carolina State Board of Education, in extending the school district line or boundary of the Scotland Neck City School District so as to only include the plant and property of the County operated Scotland Neck Junior High School, is void and unconstitutional for reasons hereinafter given.

e. That the policy, practice, and pattern of the Halifax County Board of Education in subjecting Negro or black public school teachers in integrated schools, to frivolous, arbitrary and malicious "CHARGES" and to administrative "Hearing" as part of the enforcement of the UNWRITTEN LAW against black teachers, which law punishes for the Negro or black teacher exercising disciplinary authority against students of the opposite race, being void and unconstitutional for reasons herein given.

4. That the Plaintiff, Pattie Black Cotton, is a Negro or black public school teacher and a citizen of the United States and the State of North Carolina. She is 27 years

of age and presently resides with her husband and two children in Northampton County, North Carolina. That she has six years of teaching experience, the last four of which were with the Halifax County Board of Education with the past two years having been assigned to the WILLIAM R. DAVIE SCHOOL, being the first black teacher employed in the Elementary Department thereof and is currently assigned to a teaching position at the WILLIAM R. DAVIE SCHOOL near Roanoke Rapids, North Carolina. That Plaintiff, Pattie Black Cotton possesses all the necesary qualifications for teaching in the public schools of the State of North Carolina but has been the subject of criminal "Charges" and Administrative Charges" which have created doubt and uncertainty as to the profesional, legal and ethical rights of the Plaintiff and other black teachers similarly situated where actions reflecting on the abilities and status of the teacher and her competency are based on violations of the Code of Ethics of the Education Profession and for the purpose of satisfying racists elements among some parents and teachers.

5. That the Plaintiff, Edward M. Francis, is a Negro or black citizens of the United States and the State of North Carolina, residing in Enfield, Halifax County, North Carolina. That from 1967 until his contract was terminated by letter dated June 3rd, 1969, he was a Trade and Industrial Teacher in the Town of Scotland Neck. That Plaintiff, Edward M. Francis possesses all of the qualifications for continued teaching of trade courses in Halifax County but is presently unemployed by Halifax County solely because of the creation of the Scotland Neck City Administrative Unit and the resulting loss of certain trade courses needed by and applied for by students in the Scotland Neck area as will hereinafter appear. That Plaintiff, Edward M. Francis has applied to Halifax County for other employment but has not been employed.

6. That the Plaintiff, Rodney Bennett, a minor, by his father and next friend, Lanell Bennett and the other 34 families listed in the Motion to Intervene and in the entitlement above as Scotland Neck Residents, are resi-

dents within the Town limits of Scotland Neck with the exception of Vickie Deloatch, a minor, by her parents and next friend, Rev. and Mrs. C. M. Deloarch who are outside the Town limits at the edge of Town. That all of the minors and their adult next friend are Negroes and citizens of the United States and North Carolina and Halifax County.

7. That the Plaintiffs, ERNEST L. ALSTON, a minor, by his grandparents and next friend, Mr. and Mrs. Tom M. Alston and all other minors and their adult next friend listed in the Motion to Intervene and in the above entitlement as residing in the Littleton-Lake Gaston School District in Halifax County, Littleton Township, are residents of the newly created school district, and all are citizens of the United States and of North Carolina and the adult friends are tax payers in Halifax County.

8. That the Defendant, HALIFAX COUNTY BOARD OF EDUCATION, is a public body corporate, organized and esisting under the laws of the State of North Carolina. The Defendant Board maintains and generally supervises the public schools of Halifax County Administrative Unit, acting pursuant to direction and authority contained in the State's Constitution and statutory provisions. As such, the Board is an arm of the State of North Carolina, enforcing and exercising State laws and policies. Among its duties, the Defendant Board assigns students to the various public schools and hires and assigns teachers and professional school personal to duties in the Halifax County Administrative Unit.

That by special act of the North Carolina Legislature, to wit: Chapter 31, 1969 Session Laws creating the Scatland Neck Administrative Unit and by Chapter 628, 1969 Sessions Laws, which created the Littleton-Lake Gaston School District, the Defendant Board is given additional duties as set forth in the 1969 legislative acts hereinafter complained of.

That the Defendant, W. Henry Overman, is Superintendent of the Halifax County Schools and has been such for more than 20 years. That as Superintendent, he is charged with the duty, among others, of recommending

teachers and professional personnel for duties and assignment of students to the various schools in the Halifax County School System.

9. That the Defendant Board of County Commissioners of Halifax County, pursuant to the laws and Constitution of the State of North Carolina, is charged with providing funds for the construction and maintenance of buildings, property and facilities necessary for the operation of the school system in Halifax County and with securing and expending monies to supplement those monies allocated and disbursed by the State of North Carolina for the operation of the schools. That Defendant Board of County Commissioners of Halifax County is given special duties pursuant to the special acts of the 1969 North Carolina General Allembly, to wit: Chapter 31, 1969 Sessions Laws creating the Scotland Neck City Administrative Unit and Chapter 629, 1969 Sessions La2s creating the Littleton-Lake Gaston School District as hereinafter complained of.

10. That the Defendant, Scotland Neck City Board of Education, is a public body corporate by virtue of Chapter 31, 1969 Sessions Laws as hereinafter complained of. The Defendant, Franklin B. Bailey, is the elected Superintendent for the Scotland Neck City Schools.

11. That the Littleton-Lake Gaston School District, is a public body corporate by virtue of Chapter 628, 1969 Sessions Laws as hereinafter complained of. The Defendant, Russell N. Manning is the duly elected Superintendent of the Littleton-Lake Gaston School District.

12. That the Defendant, North Carolina State Board of Education, is a public body corporate of the State of North Carolina, and is charged, by virtue of the State Constitution and the laws of the State of North Carolina. with general supervision and administration of the educational funds for all of the local boards of the State, including the Halifax County Board, the Scotland Neck City Board and the Littleton-Lake Gaston Board of Education or District and with the division and creation of local boards into administrative units; and the apportionment and division of the State funds and all funds provided by the Federal Government for assistance to

educational programs in the State which are administered by local boards; the authority is given to accept, receive use or reallocate to local boards, any federal funds or aids that may be appropriated now or hereafter for the encouragement and improvement of any phase of the free public school program, which in said defendant's discretion, is beneficial to the operation of the public schools of North Carolina; and is given AUTHORITY TO ALTER THE BOUNDARIES OF ANY ADMINISTRATIVE UNIT, and authority to provide for the enrichment and strengthening of educational opportunities for all school children of the State and to allot teachers to all local boards of education of the State; authority to allot clerical assistance to the various local boards of the State; authority to determine teacher, principal and school personnel certification; authority to provide library resources, textbooks and other instructional resources for the various local boads; authority to direct and approve generally, school construction for the schools and additions in the various school systems of the State; and authority for allocation of school buses and approval of bus routes for the various school systems of the State.

13. That the Defendant, DR. A. CRAIG PHILLIPS, is the duly elected State Superintendent of public instruction of the State of North Carolina, who is the administrative head of the public school system of the State and pursuant to the laws of the State of North Carolina, is a member and the Secretary of the State Board of Education. He is charged with organizing and establishing the State Department of Public Instruction in order that he may supervise and administer the publis school system of the State of North Carolina. He is charged with making recommendations to the Governor and the State Board of Education concerning public education within the State of North Carolina and with administering the instructional policies and programs of the State Board of Education.

14. That the above named Plaintiffs bring this action on their own behalf and on behalf of other teachers and students similarly situated, pursuant to Rule 23(a) and (b) and Rule 24 of the Federal Rules of Civil Procedure.

There are common questions of law and fact affecting the rights of the Plaintiffs and other similarly situated who are seeking an educational system in Halifax County free of racially discriminatory practices, policies, customs and the artificial racial quota achieved by the creation of new school district lines and school units herein complained of, who are so numberous as to make it impracticable to bring them all individually before the Court but there are common grievances arising out of common wrongs and common relief is sought herein for each class and members of the class. That the claims and defenses of the Plaintiffs are typical of the claims and defenses of the class and classes and that the Plaintiffs fairly and adequately represent the interest of the class and classes.

15. What the Plaintiff, Edward M. Francis, was teaching the trade of carpentry at the Scotland Neck High School from 1967 until his teaching contract was terminated solely because of the creation of the Scotland Neck City Administrative Unit herein complained of. That the letter terminating said Plaintiff's teaching contract was received June 5, 1969 and reading as follows:

"Mr. Edward M. Francis
305 Bell Street Ext.
Enfield, N. C.

Dear Mr. Francis;

DUE TO THE ESTABLISHMENT OF THE SCOTLAND NECK SCHOOL ADMINISTRATIVE UNIT, THE HALIFAX COUNTY BOARD OF EDUCATION IN MEETING HELD ON MAY 5, 1969, DIRECTED THAT YOU BE NOTIFIED THAT YOUR EMPLOYMENT IN THE HALIFAX COUNTY SCHOOL ADMINISTRATIVE UNIT TERMINATED AT THE CLOSE OF THE 1968-69 SCHOOL TERM. THIS ACTION HAS BEEN TAKEN IN ORDER THAT YOU MAY FEEL FREE TO APPLY FOR AND ACCEPT EMPLOYMENT IN THE SCOTLAND NECK UNIT.

If you desire to teach in the Halifax County Administrative Unit during the 1969-70 school year,

please indicate this by filling out and mailing to the office of Superintendent of School, Halifax, N. C. the enclosed application form. The application will be considered in the same manner as all teachers are employed.

Because of the fact that we shall be filling vacancies in the Halifax County School Unit as early as possible, I shall appreciate it if you will return the application form *at once* and not later than the close of the school term, if you desire employment in the Halifax County Unit.

I wish to express appreciation for the service you have rendered while employed in the Halifax County Administrative Unit and for the contribution you have made to the educational program.

Sincerely yours,

S/W. Henry Overman,
Superintendent
Halifax County Schools"

WHD:ar
Enclosure

and that said Plaintiff applied for a teaching position with the Halifax County Unit as directed but has not been employed.

16. That the Halifax County Board of Education is currently operating the Scotland Neck Schools pursuant to a temporary Order of this Court but refuses and fails to re-employ the Plaintiff, Edward M. Francis and refuses and fails to offer to the students the trade course previously offered.

17. That the Plaintiffs, Edward M. Francis and the minor student Plaintiffs described in Paragraphs 5, 6 and 7 above, have suffered irreparable damage and injury and a invasion of their constitutional rights by the creation of the Scotland Neck City Administrative Unit and the Littleton-Lake Gaston School District and will continue to suffer damages and injury unless the creation of

said units is declared unconstitutional and their operation permanently enjoined by this Court.

18. That the 1969 Session of the North Carolina General Assembly, in order to encourage, provide for and to perpetuate racial secregation in the black belt counties of eastern North Carolina, set a precedent and created a new State policy of establishing entremely small school administrative units out of county administrative units where there is a large black or Neegro population and to establish the lines of the new districts in such a manner as to include the largest number of white students and to exclude the largest possible number of black or Negro students, and pursuant to said new policy, did enact into law, new school separation districts or units for adjoing Halifax and Warren Counties in Eastern North Carolina.

19. That the 1969 Session of the North Carolina General Assembly, pursuant to said policy, enacted laws creating two new school administrative units from the Halifax County Administrative Unit by carving out of the eastern section of the County, the Scotland Neck City Administrative Unit with district lines co-extensive with the boundaries of the Town of Scotland Neck and on the western part of the county, carving out the Littleton-Lake Gaston School District with lines including the Town of Littleton and parts of Halifax and Warren Counties. A third new unit was carved out of the Warren County Administrative Unit and given boundary lines commensurate with those of the Town of Warrenton. That all of the enactments were opposed in the State Legislature by the Plaintiffs through the EASTERN COUNCIL ON COMMUNITY AFFAIRS as will herein appear.

20. That the Scotland Neck School separation was known as House Bill No. 22 and was enacted into law on March 3rd, 1969 by statute known as "Chapter 31 1969 Session Laws", hereafter referred to as "Chapter 31". That the said statute became effective and operative on April 8th, 1969 as a result of a favorable vote in a referendum or special election held on said date. That the school board of the unit and its Superintendent are Defendants in this action.

21. That the Littleton-Lake Gaston School separation District was known as Senate Bill 446 and was enacted into law on the 26th day of May, 1969, by the statute known as "Chapter 628, 1969 Session Laws". (hereafter referred to as "Chapter 628".) That the said statute became operative and effective on July 22nd, 1969 as a result of a favorable vote in a referendum or special election held on said date. That the Littleton-Lake Gaston District and its Superintendent are parties Defendant in this action.

22. That the Warrenton City School District separation was known as House Bill 639 and was enacted into law on the 23rd day of May, 1969 by statute known as "Chapter 578, 1969 Session Laws". That said statute became operative and effective on July 1st, 1969 as a result of a favorable vote in a referendum or special election held and had on said date, and that said Act is under attack in Alfred Turner et al vs Warren County Board of Education et al, Civil Action No. 1432, which case also attacks the Littleton-Lake Gaston District herein attacked.

23. That each of the newly enacted school separation statutes to wit: "Chapter 31", "Chapter 628", and "Chapter 578 of the Sessions Laws"; provides that upon becoming effective, all county school properties located within the new unit, the new administrative unit and all monies allocated for schools within the new unit and all other school properties located within the new unit, shall become the properties of the new unit "By Force Of This Act". That each of the acts provided for a supplemental tax of not more than fifty cents (.50¢) on each one hundred dollars of the assessed value of the real and personal property taxable in the portion of the new unit. Each of the new units passed the tax supplement in the special election held for the unit.

24. That the Board of Commissioners and County Board of Education of Halifax County are given duties and responsibilities under "Chapter 31 and Chapter 628 of the 1969 Session Laws" and are Defendants in this action.

25. That the Scotland Neck Administrative Unit will have an estimated 193 Negro or black students of which

the above named Plaintiff-students of Scotland Neck are members of the class and along with an estimated 736 white students, will form the total student body of the newly created Scotland Neck School Unit.

26. That the Plaintiff-students listed in the above Title are residents of the Littleton-Lake Gaston District and part of an estimated 200 Negro or black students within the jurisdiction of the Littleton-Lake Gaston School District, who along with an estimated 400 hundred white students, will compose the entire student body of the Littleton-Lake Gaston School District.

27. That each of the school separation units complained of, to wit: The Scotland Neck City Unit, "Chapter 31", the Littleton-Lake Gaston Units, "Chapter 628", and the Warrenton City Unit, "Chapter 578", will have a total enrollment of less than one thousand students when fully operative, including the transfer of white students under the tuition plan of the units and that the ratio of students by race in each unit will be 4 to 1 in favor of the white students while the ratio by races in the respective counties is 4 to 1 in favor of the Negro or black students and that due to the smallness of each of the units, each is financially and educationally unsound.

28. That the racism of the school separation units herein complained of was known to the State Legislature when the statutes were Bills before the Legislature. That the Plaintiffs, through the Eastern Council On Community Affairs, opposed each of the statutes as Bills before the Legislature. That on February 19th, 1969, the Scotland Neck Separation Bill known as "Chapter 31" and House Bill 22, was opposed before the Senate's, Finance Committee as being racists, a copy of the opposition is hereto attached and marked as EXHIBIT "A". That by letter dated February 25, 1969 the council requested a hearing before the Education Committee of the Senate but the Bill was enacted into law by by-passing the Education Committee of the Senate to avoid the Bill being defeated in the committee because of racism and lack of educational merit. That on April 30, 1969, The Littleton-Lake Gaston School District, "Chapter 628, as Senate Bill No. 446", was opposed as being racists, a copy of the opposition is

hereto attached and marked as EXHIBIT "B". That on May 14th, 1969, "Chapter 578, as House Bill No. 639" creating the Warrenton City School District, was opposed by the Eastern Council on Community Affairs as being racists, upon the same grounds appearing in the attack against the other Bills, which argument is hereto attached.

29. That on or about the 5th day of June, the Defendant North Carolina State Board of Education, following the consent and requests of the Defendants Scotland Neck City School Board and the Halifax County Board of Education, extended the boundary lines of the newly created Scotland Neck District to include the boundary and school plant of the Scotland Neck Junior High School, owned and operated by the Halifax County Board of Education and operated as one of the four integrated schools in Halifax County during the 1968-69 academic year. That by this action, two of the three schools in the Scotland Neck City School District have been taken over by and conveyed to the newly created Scotland Neck City School District and that not enough school plants are left in the county to meet the needs of the students left in the County Unit, being mostly of the Negro or, black students, race.

30. That a controversy exists as to the rights of certain public school teachers to continue their contract with the Halifax County Board of Education, and the right of students within the newly created school district units to remain in and with the jurisdiction of the Halifax County and the constitutionality of the acts of the North Carolina General Assembly creating Scotland Neck City Administrative unit, "Chapter 31" and the act creating the Littleton-Lake Gaston School District, Chapter 628 and the action of the North Carolina State Board of Education in extending the boundary lines of the Scotland Neck City Unit to include County property and school plant owned by the Halifax County Board of Education and needed by the County for the Negro or black student remaining in the County Unit.

31. That unless such school separation acts are declared unconstitutional by this Court, the North Carolina General Assembly will continue to enact racists school statutes which gerrymander new school district school lines in

such a manner as to include and provide for the largest possible number of white students while excluding the largest possible number of Negro or black students and unless restrained and enjoined by this Court, the Defendant Boards of Education and Boards of County Commissioners will continue to give force and effect to the provisions of the statutes complained of herein, to wit: "Chapter 31, Chapter 628, and Chapter 578 of the 1969 Sessions Laws" and extend the boundaries thereof to take from the respective counties, school property and buildings belonging to and being operated by the county boards of education, all in violation of violation of the right of the Plaintiff students and teachers as guaranteed and secured to them by the Fourteenth Amendment to the United States Constitution.

32. That the North Carolina Statute, "Chapter 31, 1969 Sessions Laws", creating the Scotland Neck City Administrative Unit and the North Carolina Statute, "Chapter 628, 1969 Session Laws", Creating the Littleton-Lake Gaston School District Administrative Unit and "Chapter 578 of the Session Laws", creating the Warrenton City Administrative Unit, are all void and unconstitutional as enacted by the North Carolina General Assembly and as applied to the Negro or black people in Eastern North Carolina and the Plaintiffs herein as affected students and teachers, for the same are in conflict with and repugnant to the Due Process and the Equal Protection of the Fourteenth Amendment to the United States Constitution for reasons as follows:

1. That the North Carolina Legislature, by enacting the Scotland Neck School Separation Bill and the Littleton-Lake Gaston School Separation Bill and the Warrenton School Separation Bill, as "Chapter 31, 628, and 578, 1969 Sessions Laws", intended to deny and did deny to the Negro or black students in Halifax and Warren Counties, an opportunity for public school integration as required by Federal Law by cutting off and withdrawing the white students from the county school system and providing for the segregation of white students in small school units which are protected from the black majority by newly created school district lines drawn in a manner so as to exclude the majority of the Negro or black students and

to include the majority of white students in the county district area.

2. That the North Carolina Legislature, by enacting "Chapter 31, 628, and 578, 1969 Sessions Laws", created miniature school districts with an artificial white majority students body in the Towns of Scotland Neck, Littleton and Warrenton in Halifax and Warren Counties in Eastern Carolina and provided a means and method of white students in Halifax and Warren Counties avoiding school integration being required of county schools by admission to the new school units upon the payment of a tuition fee which white parents will pay for school segregation and which Negro or black parents are unable to pay or unwilling to pay for as an additional expense of public education.

3. That the North Carolina Legislature, by enacting "Chapter 31, 628 and 578, 1969 Sessions Laws", creating new school district lines in Halifax and Warren Counties, arbitrarily, capriciously and unreasonably created miniature school districts with lines including the residences of the student plaintiffs and removing the student-plaintiffs from the county unit or district where members of the student-plaintiffs in the newly created unit or district where students of the white race are in a 4 to 1 majority as artificially created by the Legislature gerrymandering school district lines for the purpose of perpetuating racial segregation in violation of and contrary to Due Process of Law.

4. That the North Carolina Legislature, By enacting "Chapter 31, 628, and 578, 1969 Sessions Laws", creating and including the student-plaintiff within miniature school districts, arbitrarily, capriciously, and unreasonably deprived the student-plaintiffs and other Negro students, of the benefits and the advantages of the larger county unit, including school personnel, programs, activities, and curriculum afforded by the larger school units and placed the student-plaintiffs in a miniature school district with a white majority student body with educational disadvantages, including limited school personnel, activities, programs and curriculum and with financial burdens of a supplemental taxes to support continuing racial segregation for the white students in the newly created school units.

5. That the State Legislature, by enacting "Chapter 31, 628, and 578, 1969 Sessions Laws", re-established and reiterated a state policy of giving first choice and priority where members of the white race are involved as a majority race and caused the State Board of Education and the Halifax County Board of Education to deprive the Negro or black students of Halifax County of the use and benefit of the Scotland Neck Junior High School, operated by the County Board as an integrated school, and to surrender the Junior High School to the newly created Scotland Neck City School Board by extending the district lines of the City Board and school district to include county property outside the town limits of the Town of Scotland Neck and to include the Scotland Neck Junior High School, all for the purpose of providing for and continuing the racial segregation achieved in the creation of the Scotland Neck City Administrative Unit.

6. That the State Legislature, by enacting Chapters 31, 628 and 578, 1969 Session Laws, reversed the State Policy of consolidating small school units in order to achieve better economy and educational advantages only afforded by larger school units and estabilshed a new policy for counties where there is a large Negro or black population, with the new policy being to create MINIATURE and racially fixed school units with lines of the District so drawn that the unit will foster and perpetuate racial segregation in the public schools in the State of North Carolina.

SECOND COUNT

33. That for the SECOND COUNT of this Complaint, the Plaintiff, Pattie Black Cotton, re-alleges Paragraphs 1, 2, 3, 4, 8, 12, 13 and 14 of the First Count above in this Complaint and hereby incorporates the same in this paragraph to the same extent as if herein fully set out.

34. That the Plaintiff, Pattie Black Cotton, is and has been a victim of white racism prevalent in Halifax County to an unusual degree and affecting the operation of the schools and the status of Negro or black teachers assigned to integrated schools in Halifax County. That racism in Halifax County has caused the Plaintiff and other black

or Negro teachers to be denied privileges and immunities of public school teachers and equal protection of the school laws and to suffer and endure criminal and administrative "Charges" for the violation of the UNWRITTEN LAWS forbidding Negro or black teachers from exercising their rights under public authority to discipline school children who happen to be members of the opposite race.

35. That the Plaintiff, Pattie Black Cotton, and other Negro or black public school teachers in Halifax County are entitled to the same rights, privileges and immunities when assigned to an integrated school as in a segregated public school and are entitled to the equal protection of State laws for public school teachers, particularly so much of North Carolina General Statutes 115-146 as reads as follows;

> "IT SHALL BE THE DUTY OF ALL TEACHERS TO MAINTAIN GOOD ORDER AND DISCIPLINE IN THEIR RESPECTIVE SCHOOLS. _____ PRINCIPALS AND TEACHERS IN THE PUBLIC SCHOOLS OF THIS STATE MAY USE REASONABLE FORCE IN THE EXERCISE OF LAWFUL AUTHORITY TO RESTRAIN OR CORRECT PUPILS AND MAINTAIN ORDER. NO COUNTY OR CITY BOARD OF EDUCATION OR DISTRICT COMMITTEE SHALL PROMULGATE OR CONTINUE IN IN EFFECT A RULE, REGULATION OR BYLAW WHICH PROHIBITS THE USE OF SUCH FORCE AS IS SPECIFIED IN THIS SECTION".

36. That the Plaintiff, Pattie Black Cotton and other Negro or black public school teachers in Halifax County, N. C., are entitled to the same rights, privileges, immunities and professional regard as are required by the CODE OF ETHICS OF THE EDUCATION PROFESSION as adopted by the NATIONAL EDUCATIONAL ASSOCIATION and the Associations of the State of North Carolina, a printed copy of the 1968 edition is hereto attached and marked as EXHIBIT "C".

37. That notwithstanding the professional status and authority given the Plaintiff by the North Carolina School

Laws, the Halifax County District Court, on July 22nd, 1969, convicted the Plaintiff under the UNWRITTEN LAWS upon a criminal "Charge" made against the Plaintiff by a white parent of a student in the Plaintiff's class room who had engaged in an affray therein;

> "The undersigned, Mrs. Marvin W. Tanner, upon information and belief, being duly sworn, complains and says that at and in the county named above and on or about the 6th day of May, 1969, THE DEFENDANT NAMED ABOVE DID UNLAWFULLY, WILFULLY and MALICIOUSLY ASSAULT MARVIN TANNER, A CHILD OF TEN YEARS OF AGE WITH A DEADLY WEAPON, to wit; A RULER, BY HITTING HIM ACROSS THE HIP TEN TIMES"

and that the Halifax County District Judge found the Plaintiff "Guilty" and pronounced Judgment imposing a sixty day (60) jail term upon the Plaintiff which was suspended upon the condition that the Plaintiff "Pay a fine of $50.00 and costs of the court" from which judgment, the Plaintiff appealed to the Superior Court of Halifax County and the cause is pending in that Court.

38. That on May 27th, 1969 and while the Plaintiff was in performance of her teaching duties at the integrated William R. Davie School operated by the Defendant, Halifax County Board of Education, the Defendant, W. Henry Overman, Superintendent of Halifax County Schools, appeared in person and delivered to the Plaintiff a letter, a copy of which is hereto attached and marked as EXHIBIT "D", containing the following administrative "Charges" against the Plaintiff:

> "(1) Failure to teach and grade pupils properly in your classes."
>
> "(2) Neglectful about teaching methods by refusing to answer questions and to give help when asked by pupils."
>
> "(3) Refusing to let children eat lunch as punishment."
>
> "(4) Staying out of classroom for long periods of time."

"(5) Failure to introduce new subjects in a manner that is understood by a majority of the class."

"(6) Creating an atmosphere of fear in the classroom causing students to be afraid to ask questions because they might be ridiculed".

and that the letter gave the purpose of the charges as "The Halifax County Board of Education will conduct a hearing to determine whether or not you will be dismissed from your present employment as a teacher in the Halifax County School System as provided for in N. C. G. S. 115-145".

39. That a hearing upon the above named charges was held by the Halifax County Board of Education on the 12th day of June, 1969 at which time the Defendant, Halifax County Board, permitted a white school teacher from the same William R. Davie School where the Plaintiff is employed, to appear before it and violate the Code of Ethics of the Education Profession to the harm and injury of the Plaintiff in that the Board permitted and encouraged (Mrs.) Elizabeth Mockaday to disregard the professional status of the Plaintiff and herself as public school teachers at the WILLIAM R. DAVIE SCHOOL and to violate PRINCIPAL 111 (Commitment to the Profession) particularly SECTIONS 2, 4, and 8 thereof as appears in EXHIBIT "C" hereto attached and reading as follows:

"2. SHALL ACCORD JUST AND EQUITABLE TREATMENT TO ALL MEMBERS OF THE PROFESSION IN THE EXERCISE OF THEIR PROFESSIONAL RIGHTS AND RESPONSIBILITIES."

"4. SHALL WITHHOLD AND SAFEGUARD INFORMATION ACQUIRED ABOUT COLLEAGUES IN THE COURSE OF EMPLOYMENT."

"8. SHALL NOT KNOWINGLY DISTORT EVALUATIONS OF COLLEAGUES."

and that a Transcript of said hearing was made and contains some of the false evaluations and statements of Mrs.

Elizabeth Hockaday and others concerning the Plaintiff as a black or Negro public school teacher and that Plaintiff has not been informed of any decision of the School Board and she is uncertain as to just what effect the false and unethical statements will have on her future employment and professional rating as a public school teacher in Halifax County if left unchallenged and shown to be professional unethical.

40. That the "Charges" set forth in Paragraph 38 above were delivered to the Plaintiff by the Defendant Superintendent in person in the Defendant's visit to Plaintiffs classroom and the said "Charges" were made and prepared after criminal "Charges" were brought against the Plaintiff. That both the criminal Charge and the administrative charges were brought for the purpose and at the time to create fear and insecurity in the black teachers in integrated schools and are frivolous, malicious totally without cause and result in harassment and vexation to the Plaintiff and other Negro or black public school teachers in Halifax County and serve the cause of creating racial destruct and discord in the WILLIAM R. DAVIE SCHOOL COMMUNITY and promote the growth of the newly organized private school in the school community; to wit; THE HALIFAX ACADEMY.

41. That the Plaintiff, Pattie Black Cotton is currently employed by Halifax County and assigned at the William R. Davie School operated by Halifax County Board of Education and is now in her third year at the school.

42. That the Defendant, HALIFAX COUNTY BOARD OF EDUCATION, through its Superintendent and AREA COUNCILS, will continue to file and hear arbitrary, frivolous and malicious administration "Charges" against Negro or black public school teachers in yielding to pressure from white racists in Halifax County to subject black teachers to harassment, vexation and professional degradation and to use Administrative "Charges" and criminal "Charges" and hearings as a means of dismissing black or Negro Public School Teachers from Halifax County School System, unless enjoined and restrained by this Court.

43. That the Plaintiff, Pattie Black Cotton, as a Negro or black public school teacher in an integrated public

school, is uncertain as to her rights, privileges and immunities and as to the duty owed to her and other black teachers by white public school teachers in the same school and school system and she is uncertain as to the application of the Code of Ethics of the Education Profession as a legal standard where members of the profession are of the opposite race and as to the application of the Code of Ethics of the Education Profession as a legal standard where members of the profession are of the opposite race and as to the application of the Code of Ethics of the Education Profession to the boards of education and administrative officers where black teachers in integrated school are the subject of "Charges" and community resentment of integrated schools.

44. That a CONTROVERSY exists between the Plaintiff, Pattie Black Cotton, as a member of the Negro or black race, and the following;

A. The Defendant, HALIFAX COUNTY BOARD OF EDUCATION and the Plaintiff as to the duties owed to the Plaintiff by the Halifax County Board of Education in protecting the Plaintiff from unprofessional conduct of white teachers in violation of the Code of Ethics of the Education Profession and as to the application of the Code of Ethics of the Education Profession to boards of education.

B. The white or members of the Causasian race who are public school teachers in an integrated public school and the Plaintiff, and other Negro or black public school teachers as to the duties and professional respect owed to the Plaintiff and others in the same school and profession as measured by the Code of Ethics of the Education Profession as adopted by the National Education Association and State Associations.

C. That a controversy exists as to the application of the Code of Ethics of the Education Profession as a legal standard for the measurement of professional conduct and relationship between black or Negro Public School Teachers and the boards of education and the Public School Teachers of the Opposite Race.

WHEREFORE, the Plaintiffs pray as follows:

1. That the Court declare that the Act of the North Carolina General Assembly, Chapter 31, 1969 Session Laws, creating the Scotland Neck City School Administrative Unit, is void and unconstitutional for reasons stated in the Complaint.

2. That the Court declare that the Act of the North Carolina General Assembly, Chapter 628, 1969 Sessions Laws, creating the LITTLETON-LAKE GASTON SCHOOL DISTRICT, is void and unconstitutional for reasons stated in the Complaint.

3. That the Court declare that the Action of the Scotland Neck City Board of Education and of the Halifax County Board of Education and of the North Carolina State Board of Education, in extending the original lines or boundary of the Scotland Neck School Administrative District to include and encompass the Scotland Neck Junior High School located in the County School District, is void and unconstitutional for reasons stated in the Complaint.

4. That the Court declare that the policy, practice and pattern of the Halifax County Board of Education in subjecting black or Negro public school teachers in integrated schools, to frivolous, arbitrary and malicious "Charges" and "Hearings", as punishment for the violation of the UNWRITTEN LAW which forbids black persons from exercising public authority and discipline of persons of the opposite race, are void and unconstitutional for reasons stated in the Complaint.

5. That the Court declare that Negro or black public school teachers in integrated schools are entitled to the same professional respect and ethical treatment by the school board and white public school teachers as is established and practiced by members of the teaching profession in segregated schools and between persons of the same race or color and that the Plaintiff, Pattie Black Cotton, is entitled to have other teachers to show the same regard for her professional rights, privileges and imunities as is required by and measured by the standards of ethics of the Code of Ethics of the Education Profession as adopted by the National Education Asso-

ciation and the state teachers associations in the State of North Carolina.

6. That the Plaintiff, EDWARD M. FRANCIS, is entitled to re-instatement as a public school teacher because of the unconstitutionality of the Scotland Neck City Administrative Unit for reasons stated in the Complaint and that he be reinstated in the same or comparable teaching position as he held prior to the Scotland Neck school separation and his dismissal and that he be awarded compensation for expenses and loss of wages incurred as a result of his wrongful dismissal.

7. That this cause be advanced on the docket for immediate hearing and after such hearing, the Court preliminarily and permanently enjoin the following:

A. The Defendant HALIFAX COUNTY BOARD OF EDUCATION and its members and Superintendent;

1. From issuing or enforcing any order or directive individually or in concert with the Scotland Neck City Board of Education or the Littleton-Lake Gaston School District, requiring the Student-Plaintiffs or any other students similarly situated, to attend any public school or to submit to any school administrative authority, other than the Halifax County Board of Education.

2. From acting individually or in concert with or participation with or at the direction of others, in continuing the policy, practice, custom and usage of discriminating against the student-plaintiffs and teachers in the Halifax County schools and the members of their class because of race, creed or color, particularly in the assignment of students and teachers and in the hiring and dismissing of teachers or in refusing to hire them and other school personnel in the Halifax County Administrative Unit on the basis of race, creed or color.

3. From condoning, encouraging, accomodating or acting in concert with white parents and

teachers in Halifax County in denying to the Negro or black public school teacher in integrated public schools, the same ethical treatment and accord of professional respect and regard for professional rights and responsibilities as accorded white public school teachers and as required by the standards of the Code of Ethics of the Education Profession as adopted by the National Education Association and State associations.

4. From terminating teaching contracts or refusing to rehire teachers whose contracts were terminated solely because of the creation of the Scotland Neck City Administrative Unit or the Littleton Lake Gaston School District.

5. From refusing to offer Trade Courses and other courses previously offered in the county system and terminated solely as a result of the creation of the Scotland Neck City Administrative Unit or the Littleton-Lake Gaston School District.

6. From ceasing to operate and control the property of the Halifax County Schools and the school plant known as the Scotland Neck Junior High School and included in the extention of the school district lines of the Scotland Neck City Administrative Unit.

7. From failing and refusing to consider the black or Negro parents and teachers in the formulation of school zone lines, grade consolidation or both in order to completely desegregate all the public schools in the Halifax County School System within the time specified by the Court.

8. To completely desegregate all teachers and school personnel in the school system so that the percentage of Negro and white teachers and school personnel in all schools in the county school system will approximate the number of Negro and white teachers in the school system.

9. To discontinue and eliminate and and all other practices and customs in the Halifax County School System based on race or color.

10. From performing any of the acts or duties required by Chapter 31 of the Sessions Laws, 1969, creating the Scotland Neck City Administrative Unit or Chapter 628, creating the Littleton-Lake Gaston School District.

B. The Defendant, BOARD OF COUNTY COMMISSIONERS OF HALIFAX COUNTY;

1. From performing any of the duties required of it by Chapters 31 and 628 of the 1969 Sessions Laws Creating the Scotland Neck and the Littleton-Lake Gaston School Districts.

2. From continuing to authorize, sanction or encourage practices, programs and activities, including school construction and additions, designed to continue the racially segregated Public Schools in Halifax County, North Carolina.

3. From continuing to disburse funds to finance facially segregated practices and policies in the Halifax County School system or which tend to perpetuate racial segregation in Halifax County, North Carolina.

4. From failing and refusing to take affirmative steps and actions to compel the elimination of the racially discriminatory practices in the Halifax County Public School System.

C. The Defendant, SCOTLAND NECK CITY BOARD OF EDUCATION and its Superintendent as follows;

1. From performing any of the functions, acts or duties required by Chapter 31, Sessions Laws, 1969, North Carolina General Assembly.

D. THE LITTLETON-LAKE GASTON SCHOOL DISTRICT and its Superintendent, Defendants herein;

1. From performing any of the functions acts or duties required of it by Chapter 628 of the

1969 Sessions Laws of the North Carolina General Assembly.

E. The Defendant, NORTH CAROLINA STATE BOARD OF EDUCATION and DR. A. CRAIG PHILLIPS, Superintendent of Public Instruction;

1. From allocating any teachers, principals and other school personnel or from continuing to allocate teachers, principals and school personnel or to disburse any State or Federal Funds to the school district units created by the North Carolina General Assembly, Statutes Chapter 31 and Chapter 628 creating the Scotland Neck City Administrative Unit and the Littleton-Lake Gaston School District

2. From continuing to authorize, sanction or to encourage the practices, programs and activities designed to continue racially segregated schools in Halifax County, North Carolina.

3. From continuing to allocate teachers, principals and school personnel to the Halifax County Board of Education in such a manner as to encourage or permit racial employment or assignment of such personnel;

4. From continuing to disburse State and Federal funds to finance racially segregated practices and policies in the Halifax County Schools or in a manner that will perpetuate or which tends to perpetuate such practices and policies.

5. From failing and refusing to take affirmative steps to compel the elimination of racially discriminatory practices in the Halifax County Public School System.

8. Plaintiffs further pray that necessary or permissible Defendants be made parties to this action as follows:

W. HENRY OVERMAN, Superintendent of Halifax County Schools;

BOARD OF COUNTY COMMISSIONERS OF HALIFAX COUNTY, a public body corporate;

SCOTLAND NECK CITY BOARD OF EDUCATION, a public body corporate, and FRANKLIN B. BAILEY, Superintendent of the Scotland Neck City Schools;

LITTLETON-LAKE GASTON SCHOOL DISTRICT, a public body corporate, and RUSSELL N. MANNING, Superintendent of Littleton-Lake Gaston School District;

NORTH CAROLINA STATE BOARD OF EDUCATION, a public body corporate, and DR. A. CRAIG PHILLIPS, North Carolina State Superintendent of Public Instruction.

9. Plaintiffs further pray that pending the full and complete desegregation of the Halifax County School System, that the Court retain jurisdiction of this cause; that the Plaintiffs be awarded their costs herein, including reasonable counsel fees and be granted such other and further relief as to the Court may appear equitable and proper.

This 1st day of November, 1969.

Respectfully submitted

/s/ James R. Walker, Jr.
JAMES R. WALKER, JR.
501 West 3rd Street
Weldon, North Carolina

SAMUEL S. MITCHELL
126½ East Hargett Street
Raleigh, North Carolina
Attorneys for the Plaintiffs

NORTH CAROLINA

NORTHAMPTON COUNTY

VERIFICATION

PATTIE BLACK COTTON, being first duly sworn, deposes and says; that she is a public school teacher in Halifax County and is a Plaintiff in the foregoing Complaint in Intervention; that she has read and knows the contents thereof; that the same are true of her personal knowledge, except those matters stated and alleged upon information and belief, and as to those matters, she believes them to be true.

/s/ Pattie Black Cotton
(Mrs.) PATTIE BLACK COTTON,
Affiant.

sworn to and subscribed before me
this 1st day of November, 1969

/s/ Helen C. Lewis
Notary Public
My Commission Expires March 6th, 1970

NORTH CAROLINA
HALIFAX COUNTY

VERIFICATION

EDWARD M. FRANCIS, being first duly sworn, deposes and says; that he is a resident of Enfield North Carolina and a former teacher in the Halifax County School System and is a Plaintiff in the foregoing Complaint in Intervention; That he has read and knows the contents thereof; that the same are true of his own personal knowledge, except those matters stated and alleged upon information and belief, and as to those matters he believes them to be true.

/s/ Edward M. Francis
EDWARD M. FRANCIS, Affiant.

Sworn to and subscribed before me
this 12 day of November, 1969

/s/ Cherry E. Clarke
Notary Public
My Commission Expires March 22, 1971.

[Caption Omitted]

ANSWER OF DEFENDANT SCOTLAND NECK CITY BOARD OF EDUCATION TO THE COMPLAINT IN INTERVENTION AND AN AFFIRMATIVE PLEA THAT THE COURT PRESERVE THE PRESENT STATUS OF SCHOOL ATTENDANCE IN THE SCOTLAND NECK SCHOOL PENDING THE FINAL DETERMINATION OF THE ISSUES IN THIS CAUSE

FIRST COUNT

1. To the Intervener-Plaintiffs adoption of the allegations of the original Complaint in this cause, this Defendant repeats its pleadings in defense thereto including its Answer and Amended Answer and First Further Answer heretofore filed.

2. This Defendant denies that the Intervener-Plaintiffs can invoke or have invoked properly the jurisdiction of this Court in any matter affecting this Defendant except the constitutionality of Chapter 31, 1969 Session Laws of North Carolina. Except as herein admitted as to the jurisdiction of this Court on the constitutional question the allegations of paragraph 2 are denied.

3. It is admitted that this is a proceeding seeking to restrain the defendant as is alleged in sub-section 1 of paragraph 3 of the Intervener Complaint.

With respect to the sub-heads 2, 3, 4 and 5 it does not appear that they are directed against or affect this Defendant. To the extent that they may be directed against this Defendant they are denied.

With respect to sub-paragraph 6 of paragraph 3 it appears that the seeking of the injunction there described is based on the premise that the constitutionality of the statute creating the Scotland Neck School District is upheld. Accepting that premise, this Defendant denies the propriety of granting the injunction sought.

With respect to the description of the proceedings for a declaratory judgment in sub-paragraph A, B, C, D and E of paragraph 3 this Defendant denies any and all of said such allegations of fact and such conclusions of law as are there stated against this Defendant and

denies the propriety of the granting of any one or more of the prayers for declaratory judgments therein described.

4. This Defendant does not have knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and therefore denies same.

5. This Defendant does not have knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and therefore denies same.

6. This Defendant does not have knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and therefore denies same.

7. This defendant does not have knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and therefore denies same.

8. That the allegations of paragraph 8 are admitted.

9. That the allegations of paragraph 9 are admitted.

10. The allegations of paragraph 10 are admitted except that Franklin D. Bailey, who had been employed by this Defendant as Superintendent of the Scotland Neck City Schools was released from employment after the Preliminary Injunction was signed in this cause.

11. The allegations of paragraph 11 are admitted except that this Defendant has no information sufficient to form a belief as to the truth of the allegations relative to Russell N. Fanning and therefore denies same.

12. It is admitted that the North Carolina State Board of Education is an agency of the State and exercises such powers and duties as provided by the Constitution and laws of the State of North Carolina; that except as herein admitted Paragrph 12 is denied.

13. It is admitted that the Defendant, A. Craig Phillips, is the duly elected Superintendent of Public Instruction, and that he exercises such powers and duties as provided by the Constitution and laws of the State of North Carolina; that except as admitted the allegations of Paragraph 13 are denied.

14. The allegations of paragraph 14 are denied.

15. This Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 and therefore denies the same.

16. This Defendant has no knowledge or information

sufficient to form a belief as to the truth of the allegations of paragraph 16 and therefore denies the same.

17. The allegations of paragraph 17 are denied.

18. The allegations of paragraph 18 are denied.

19. The allegations of paragraph 19 are denied.

20. The allegations of paragraph 20 are admitted.

21. The allegations of paragraph 21 are admitted except that this defendant has no knowledge or information as to whether the making of the Littleton Lake Gaston School District and its Superintendent parties has been accomplished.

22. The allegations of paragraph 22 are admitted.

23. The allegations of paragraph 23 are admitted.

24. The allegations of paragraph 24 are admitted.

25. The allegations of paragraph 25 are denied.

26. This Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 26 and therefore denies same.

27. The allegations of paragraph 27 are denied.

28. The allegations of paragraph 28, as therein alleged, are denied.

29. The allegations of paragraph 29, as therein alleged, are denied.

30. The allegations of paragraph 30 are denied.

31. The allegations of paragraph 31 are denied.

32. The allegations of paragraph 32 are denied.

SECOND COUNT

33. This Defendant here adopts and again alleges its answers to paragraphs 1, 2, 3, 4, 8, 12, 13 and 14 of the First Count in the Complaint and hereby incorporates the same in this paragraph.

34. This Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 34 and therefore denies same.

35.-44. The allegations of the Intervener's Complaint contained in paragraphs 35-44 inclusive do not relate to any issue between Intervener-Plaintiffs and this Defendant and, therefore, it is not required that this Defendant answer them. If this Defendant should be required to answer them, it would allege that it has no knowledge or information sufficient to form a belief as to the truth of the allegations and would deny them.

FIRST FURTHER ANSWER AND AN AFFIRMATIVE PLEA THAT THE COURT PRESERVE THE PRESENT STATUS OF SCHOOL ATTENDANCE IN THE SCOTLAND NECK SCHOOL PENDING THE FINAL DETERMINATION OF THE ISSUES IN THIS CAUSE

For a First Further Answer and an affirmative plea that that Court preserve the present status of school attendance in the Scotland Neck School pending a final determination on the merits of the constitutional issue raised in the present action, this Defendant alleges and says:

1. The major relief sought by the Intervener-Plaintiffs against this Defendant is a Court declaration that Chapter 31 Session Laws of the General Assembly of North Carolina for the year 1969 violates the Constitution of the United States. The Intervener-Plaintiffs seek to support their claim of unconstitutionality by incorrect allegations of fact and unsound statements of law. The objectives stated by Intervener-Plaintiffs in their complaint would, if achieved, be in plain violation of the Constitution of the United States.

2. The 1969 Legislative Act creating a new school district defined its geographical limits as the lines encompassing the entire City of Scotland Neck. There were no new lines drawn.

3. The Act provided that it was to become effective only if the voters of Scotland Neck approved a school tax of $.50 on each $100.00 of property valuation in the City of Scotland Neck. The voters of Scotland Neck approved that tax.

4. At the time of the passage of the Act there were, and at this time there are, residing in the City of Scotland Neck approximately 800 children of school age. They are divided racially, approximately 57% white and 43% black. The school buildings within the corporate limits of Scotland Neck will accommodate, without crowding, approximately 830 students. The residential racial proportions of the population in Scotland Neck were achieved by natural free choice of residence by individual families

and not in any way by legally imposed racial segregation.

5. The Scotland Neck City Board of Education has, by its pleading, in this case and by its evidence heretofore taken, requested this Federal Court, upon approval of the constitutionality of the statute, to retain jurisdiction of the cause in order that the transfer of any students into or out of the Scotland Neck School should be within the view and under the supervision of the Court and subject to objection by interested parties and a hearing. There can be no disturbance of the racial proportions by transfer except as may be approved by the Court.

6. The defendant Scotland Neck City Board of Education and the great majority of the residents in Scotland Neck are determined, if permitted by this Court, to operate an improved school for all of the children of school age living within the boundaries of the City of Scotland Neck. It is their firm intent and purpose to operate such a school without any regard whatever to race and to treat every child alike, regardless of race, creed or color. It is their purpose and intent to operate a truly unitary school in Scotland Neck. It is the information and belief of the members of the Scotland Neck City Board of Education that such a unitary school will have the careful and interested attention of the people living in Scotland Neck; that it will have their enthusiastic support and will have the benefit of the determination of the people of Scotland Neck to make the unitary school work and to make it work now.

7. The success of the operation of a public school, in which there is no racial discrimination, under conditions as they exist today, can be assured best by the securing of strong community support. Without such community support, a public school cannot be successful.

8. The best interests of the children living in a community are served by the opportunity to attend a public school conducted in that community.

9. The children living within the boundaries of the City of Scotland Neck, both white children and black children, are entitled as a matter of right to have the opportunity to go to the public school in that community. To deny that right to any Scotland Neck child because

of his race would violate the Constitution of the United States.

10. Children who are living within the boundaries of the County of Halifax school system, before the enactment of the statute in question, were divided racially in ratio of approximately 80% black and 20% white. It is the objective of the Intervener-Plaintiffs that the Court shall declare the statute creating the Scotland Neck school district unconstitutional and shall order the School Board of the county system to so divide and transport the children that in every school in the County system there shall be a ratio of 80% black and 20% white. That would mean, of necessity, that many white children would have to be transported by bus from their homes in Scotland Neck to distant schools outside of Scotland Neck, and that many black students would have to be transported by bus from their homes far beyond the boundaries of Scotland Neck to the school within the boundaries of Scotland Neck. Neither the white students and their parents, nor the black students and their parents, desire this. A great majority of them are greatly opposed to it. The accomplishment of the objective of the Intervener-Plaintiffs would be the assigning and the transporting of children to schools on a basis solely of race. It is the declared law of this country that a unitary school shall be conducted regardless of race and that the objective is not to make any distinctions because of race. The assignment and the transportation of school children based solely on the color of the skin is a discrimination condemned by the constitution of the United States.

11. To bus a student, white or black, from his residence and away from a school in his residential community to a school many miles away, against the wishes of his parents and contrary to the best interests of the child and solely because of the color of his skin, is an act controlled completely by racial orgin. It is an act drawing only racial lines. It is an act which will increase racial consciousness and tend to breed racial animosities. It is racial discrimination condemned by the constitution of the United States and so held unconstitutional uniformly by all of our Courts until some recent difficult to understand decisions.

12. To assign and to transport children to schools far beyond their residential district schools solely because of race is so contrary to public policy and to the common sense which is the basis of common law as to offend the public sense of justice and create devastating doubts about the administration of justice.

13. The policy of pupil assignment and lengthy pupil bussing solely because of race will damage seriously and threaten to destroy the schools and even the social and governmental fabric of Scotland Neck, of Halifax County, of the State of North Carolina and of the United States of America. The inevitability of the incurring of such damage is assured by the fact that the Department of Justice and other agencies of the United States are not seeking to apply or to enforce in all geographical areas of the United States the policy of assigning and transporting students from community to community in order to achieve a predetermined racial mixture.

14. We have here, in this case an encouraging situation where a community earnestly desires to conduct in that community a unitary community public school without regard to race, creed or color, and where there is a realistic promise of success now. If such success could be achieved in the Scotland Neck School District there would result great benefit fo[r] the surrounding communities and counties and more ready acceptance of the conviction that racially mixed schools in those communities may be made to work satisfactorily.

15. The geographical zoning for a completely unitary school, as was contemplated by the legislation and as is promised by this Defendant, is just the kind of integration which was first contemplated and described as the ideal to be achieved in the opinion of the Supreme Court in the first Brown case (347 US 433 at page 495) where the Court directed that the attorneys in the case present to the Court in the future (the second Brown case) arguments on the point described by the Court as follows:

"4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(a) would a decree necessarily follow providing that, within the limits set by normal geographic school dis-

tricting, Negro children should forthwith be admitted to schools of their choice, or

"(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

16. A unitary Scotland Neck School, contemplated by the North Carolina statute and promised by this Defendant, is just the kind of solution to the problem of integration as was recommended with approval by the Supreme Court of the United States in the leading case *Green* v. *School Board of New Kent County* (391 US 430 at page 441 May 27, 1968) where it recommended ". . . for illustration zoning, promising speedier and more effective conversion to a unitary nonracial system . . .".

17. If, during the pendency of the final determination of the constitutionality of the Scotland Neck statute, there is granted the relief sought herein either by the Plaintiff or by the Intervener-Plaintiffs and if as a result thereof, the racial balance now existing between students living within the boundaries of Scotland Neck are changed and distorted so that the racial balance in the Scotland Neck School will be shifted to a very large black majority, irreparable injury will be done to the school in Scotland Neck and to those persons whose interests are represented by this Defendant. The people of Scotland Neck will despair of the conduct in that community of a satisfactory school. They will become alarmed by the threat of the developments as described in such publication as an article in the Monday, January 26th issue of "The National Observer", copy of which is attached to this First Further Answer as Exhibit A. A subsequent adjudication of constitutionality of the Scotland Neck Statute would not repair the damage done in the interim.

WHEREFORE, this Defendant prays:

1. That the statute establishing the Scotland Neck School District be declared constitutional and that this defendant be authorized to proceed, at the earliest feasible time, to carry out its duties pursuant to that statute and

2. That, pending the final determination in the highest Court of Appeals to which the case may be taken of the question of the constitutionality of the Scotland Neck Statute, this Court abstain from ordering or approving or permitting the changing or the disturbing of the present existing status with respect to the schools in Scotland Neck and the attendance of children of school age living in Scotland Neck or at this time attending the schools in Scotland Neck.

3. That, after the filing of such replies as one or more of the several parties hereto see fit to make to the allegations contained in the foregoing First Further Answer or after the time for replying to same has expired, this Defendant be afforded the opportunity to be heard on the following matters:

A. The prayers for temporary relief sought by the Plaintiff-Intervener insofar as said prayers affect this Defendant;

B. Any other prayer for temporary relief which may be set forth in replies to the First Further Answer hereinabove;

C. The prayer for abstention by the Court as sought in the First Further Answer hereinabove.

/s/ William T. Joyner
WILLIAM T. JOYNER
P. O. Box 109
Raleigh, North Carolina

/s/ Walton K. Joyner
WALTON K. JOYNER
P. O. Box 109
Raleigh, North Carolina

/s/ C. Kitchin Josey
C. KITCHIN JOSEY
Scotland Neck
North Carolina
Attorneys for Defendant
Scotland Neck City Board
of Education

EXHIBIT A

DOUBTS GROW ABOUT SCHOOL INTEGRATION

Washington, D. C.

A new word has entered the debate over segregation and integration in the nation's public schools: resegregation.

In dozens of cities, schools and school systems once almost entirely white are turning increasingly nonwhite. This trend, produced by the familiar exodus of whites to the suburbs and nonwhites to the inner cities, has been going on for more than 30 years.

Only now, however, is it becoming a matter of prime concern to Federal officials. A new Federal school survey shows that racial isolation exists in every section of the country and that its growth is most rapid in the big Northern cities. This fact is raising new doubts among many long-time integrationists about the wisdom of trying to enforce desegregation in the schools. Items:

Several years ago, the Cleveland Board of Education searched the city for a new high-school site that would permit optimum racial integration. They settled on a neighborhood of modest owner-occupied homes near the suburb of Shaker Heights that was 60 per cent white, 40 per cent black. But when John F. Kennedy High School opened in 1965, 95 per cent of its pupils were black. "There's no question the decision to open that school accelerated the departure of whites," says Mrs. Conella Coulter Brown, administrative assistant for the Cleveland schools.

Edmondson High School on the west side of Baltimore was 80 percent white when it opened in 1957. Today there are 25 whites out of its student population of 2,700. "This is a well-kept-up residential area," says assistant principal Margery W. Harriss. "But once the school turned half-black, it turned rapidly almost 100 per cent black. The whites just moved out or took their children elsewhere."

Heavy Negro migration gave the District of Columbia's schools a Negro majority as early as 1950—four

years before the Supreme Court's watershed desegregation decision. In 1970, with the schools 95 per cent nonwhite, middle-class Negroes are fleeing—just across the boundary to neighboring Prince George's County, Maryland. The interesting thing about Prince George's enrollments this year, however, is not that the number of new blacks is up but that the number of new whites is down. No one knows exactly why, but one administrator muses: "The whites are moving to other Washington suburbs rather than to Prince George's."

In city after city in the North, the story is the same: Schools once all or nearly all white are drawing nonwhites in increasing numbers. When they reach a "tipping point" of 30 to 50 per cent, the whites move out and the schools become rapidly almost entirely nonwhite.

The extent of resegregation in the North has never been known with any certainty. But the Department of Health, Education, and Welfare (HEW) undertook a survey of the racial composition of 90 per cent of the school districts in the country during the 1968-1969 school years, and fed the returns into a high-speed computer. The results, released Jan. 4, portray a system of segregated education that knows no regional boundaries.

The survey shows, for example, that 5 out of 10 Negroes outside the South attend schools 95 to 100 per cent Negro, as opposed to 7 out of 10 Negroes in the 11 Southern states. Only 25 per cent of the Negroes outside the South attend majority-white schools, as contrasted with 18 per cent of the Negroes in Southern schools.

The survey shows too that 10 of the largest 20 city school systems in the country have majority Negro enrollments. In 16 of those systems, 60 per cent or more of the Negroes go to schools 95 to 100 per cent Negro—almost totally segregated.

A Stennis Challenge

Federal officials say they are deeply troubled by the extent of segregation the survey has uncovered. Sen. John Stennis, Mississippi Democrat, first previewed the

findings in a series of speeches in December, in which he challenged the Government to pursue desegregation in the North with the same vigor it is pursuing desegregation in the South. "If segregation is wrong in the public schools of the South," he argued, "it is wrong in the public schools of all other states."

Mr. Stennis made the point in arguing that the Government should ease up on its efforts to promote desegregation of schools. Leon E. Panetta, HEW's chief civil-rights officer, on the other hand, told Congress two months ago that the answer is not to make segregation legal in the South but to pass legislation making it illegal everywhere.

* * * netta reflected on the emerging pattern of resegregation in America and said: "Nobody really is considering what the answers to this situation are, and whether there aren't new injustices resulting from rectifying gross past injustices."

Ever since the Supreme Court held in 1954 that state-supported racial segregation was a denial of equal educational opportunity, the courts have been trying to undo the vestiges of the South's dual school system. With the passage of the 1964 Civil Rights Act, the Justice Department and HEW joined the battle to force recalcitrant school districts to adopt plans of racial balance.

Turning Attention North

In the past two years, both agencies have begun turning their attention to school discrimination outside the South, but only a handful of non-Southern districts have been cited for discrimination. This is because racial separation in Northern districts is generally regarded as *de facto* segregation, a result of housing patterns, rather than—as in the South—*de jure*, the result of official law or policy.

Last week, in the second of seven suits filed by the Justice Department in non-Southern districts, a Federal district court ordered the Pasadena, Calif., school board to put into effect by next September a desegregation plan that would give none of its schools a nonwhite majority. The district—30 per cent black, 58 per cent white, and

12 per cent other minorities—was accused of discriminating in the making of school district boundaries, teacher assignments and in other ways.

So far, few courts have held that the existence of *de facto* segregation itself is proof of discrimination, and the Supreme Court has not ruled on the issue. Yet the disparity continues between what is forbidden in the South and what is tolerated in the North, and the pattern of Northern separation begins to look more like its Southern counterpart.

For example, 17 Florida school systems, with two-thirds of the state's pupil population, are currently under Federal court orders to desegregate, two of them by Feb. 1 under a Supreme Court order. Seventy-two per cent of the Negro students in Florida attend schools in which Negroes constitute 95 to 100 per cent of the enrollment.

Yet 72 per cent of the Negro students in Illinois, according to the HEW survey, also attend schools with 95 to 100 per cent Negro enrollment, and there are no court orders compelling desegregation in Illinois. In fact, it can be argued there is more segregation in Illinois than in Florida. Theoretically it should be easier for Illinois, where Negroes make up 18 per cent of the student population, to place Negroes in majority-white schools than for Florida, where they make up 23.2 per cent. Yet there are proportionately more Negroes in majority-white schools in Florida (23.2 per cent) than in Illinois (13.6).

It seems likely that the courts will not for long be able to postpone consideration of such discrepancies in the application of national law. For a few Southern school districts, which have desegregated in accordance with the law, now find themselves victims of resegregation, ostensibly as a result of shifting housing patterns. One such district is Atlanta, where integration began eight years ago as the result of court suits initiated by the NAACP and other civil-rights groups.

Two Escape Routes

Since that time, 25 schools that were formerly all-white have turned predominantly black, as white par-

ents have followed one of the two legal escape routes open to them: a private school or a home in the suburbs. Today, the school system, predominantly white before integration, is two-thirds black, but adjoining, suburban school systems are 80 to 95 per cent white.

If this appears to be *de facto* segregation Northern-style, Atlanta—because it had a dual school system until recently—is nonetheless still subject to a Supreme Court order of Jan. 14, requiring desegregation of schools in Georgia and four other Southern states by Feb. 1.

Southerners have long been grumbling about what they wryly refer to as "this dual system of justice" (one for the North, another for the South), and they are beginning to organize to combat it. Last week, Florida's Gov. Claude Kirk appealed to the U.S. Supreme Court to set national desegregation standards that would affect all 50 states. And the attorneys general of Louisiana, Mississippi, and Alabama announced a joint legal effort designed to ensure that "the same rules for administration of public schools" imposed by the Federal courts in the South "apply to all other states."

The forces attempting to undermine enforced desegregation will get an unexpected assist next month with the publication of a book by Harper & Row, which challenges the Constitutional basis of court-ordered integration.

Entitled *The Supreme Court and the Idea of Progress*, and written by Yale University's Alexander M. Bickel, a Constitutional law authority of impeccable credentials among civil-rights advocates, the book is an expanded version of the Holmes Lectures, which Professor Bickel delivered at Harvard Law School in October.

In a chapter on the Supreme Court's desegregation rulings, Professor Bickel argues the Court, beginning with the history-making *Brown* v. *Board of Education* decision in 1954, should have contented itself with finding that legally enforced school segregation is unconstitutional.

Dubious Sociology?

In going beyond that principle to argue that separate educational facilities are inherently unequal, says Pro-

fessor Bickel, the Court based its reasoning on dubious sociology and a parochial view of American education, which holds that education's main duty is to promote assimilation. As a result, says Mr. Bickel:

"In most of the larger urban areas, demographic conditions are such that no policy that a court can order, and a school board, a city, or even a state has the capability to put into effect, will in fact result in the foreseeable future in racially balanced public schools."

Enforced desegregation, in other words, will merely force more whites into the suburbs or into private schools, leaving, Professor Bickel argues, only the poor—black and white—in the city schools.

It should be noted that there are many successful experiments in racial desegregation of schools. Several dozen Northern school districts, according to HEW estimates, have achieved full and voluntary integration by such techniques as altering attendance zones, busing, and pairing of students to achieve racial balance. In White Plains, N.Y., for example, a quota system introduced in 1964 has not resulted in an exodus of whites. No school may have more than a 30 per cent or less than a 10 per cent enrollment of minority-group students.

But such plans, officials say, generally work in small or medium-size cities (White Plains' population: 65,000), where the population is stable and the blacks are in the minority. They often require, in addition, a rare degree of local leadership.

Central cities, on the other hand, experienced an increase of 2,400,000 in the Negro population between 1960 and 1968, and a decline of 2,100,000 in the white population, according to Census Bureau figures. While the figures are open to various interpretations, they nonetheless make it clear that great numbers of whites do not consider integration a primary social goal.

Changing Nonwhite Attitude

Integration seems to be losing its attraction among nonwhites as well, at least as a short-run goal. Civil-rights leader James Farmer, now a high Nixon Admin-

istration official, said recently he has stopped trying to "sell Negro audiences on integration." The reason: "They don't agree on it any more."

In Philadelphia, where 60 per cent of the Negro school children attend schools that are 95 to 100 per cent Negro, officials report waning enthusiasm for busing black students to white schools to relieve overcrowding. "The people want to go to their neighborhood school," says school spokesman Robert S. Finarelli. "It's the state, not local people, pressing us for a desegregation plan."

The educational argument for integrated schools is based on the premise that minority-group children make their greatest achievement gains in an integrated environment. Numerous studies over the years, including the mammoth Coleman Report, issued by the U.S. Office of Education in 1966, have documented this thesis.

Conversely, there is relatively little information to indicate that spending more money in black schools in the slums does much good. "Most experiments in improving ghetto education have, quite frankly, been failures," says a U.S. Office of Education official.

That is why Government "integrationists" are so disturbed by the new findings of racial resegregation in the public schools. Leon Panetta, HEW's 31-year-old civil-rights chief, throws up his hands and shrugs. "We need a congressional examination of this whole question of the results of integration," he says. "In the meantime, we do what the law says we should do."

—MARK R. ARNOLD

RACIAL ISOLATION IN PUBLIC SCHOOLS

(1968-69 School Year)

City	Negro % of total students	% Negroes in majority white schools	% Negroes in 95-100% Negro schools
D.C.	93.5	0.9	89.2
CHICAGO	52.9	3.2	85.4
LOS ANGELES	22.6	4.7	78.5
NEW YORK CITY	31.5	19.7	43.9
HOUSTON	33.3	5.3	86.4
BALTIMORE	65.1	7.7	75.8
DALLAS	30.8	2.1	82.2
PHILADELPHIA	58.8	9.6	59.8
INDIANAPOLIS	33.7	22.4	52.9
BOSTON	27.1	23.3	33.6
PITTSBURGH	39.2	21.3	42.7
KANSAS CITY, MO.	46.8	14.0	67.3
BUFFALO	36.6	27.0	61.1
OKLAHOMA CITY	21.8	12.5	79.7
ST. LOUIS	63.5	7.1	86.2
ATLANTA	61.7	5.4	90.0
ORLEANS PAR., LA. (NEW ORLEANS)	67.1	8.8	81.2
NEWARK	72.5	2.1	75.8
GARY, IND.	61.6	3.1	80.8
ROCHESTER, N.Y.	28.9	45.6	12.1
FRESNO, CALIF.	9.0	15.8	72.5
OMAHA, NEB.	18.1	20.5	38.3

(Source: Department of Health, Education, and Welfare)

[Caption Omitted]

ANSWER TO COMPLAINT IN INTERVENTION BY BOARD OF COUNTY COMMISSIONERS OF HALIFAX COUNTY

FIRST DEFENSE AND PLEA OF FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

1. That no claim upon which relief can be granted is stated against this defendant in respect to:

(1) The allegations in respect to the constitutionality of Chapters 31 and 628 of the 1969 Session Laws of North Carolina;

(2) The allegations in respect to the alleged transfer of the Scotland Neck Junior High School property or;

(3) The allegations of Pattie Black Cotton, Edward M. Francis and other black teachers similarly situated;

The said allegations constituting these causes of action being directed at the alleged acts of the Halifax County Board of Education and the only relief sought, except a ruling on the constitutionality of said Chapters 31 and 628, being against the said Halifax County Board of Education.

SECOND DEFENSE

1. That the allegations of paragraphs one, two and three of the Complaint in Intervention are denied.

2. That this defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs four, five, six and seven of the Complaint in Intervention and, therefore, denies same.

3. The allegations of paragraph eight of the Complaint in Intervention are denied; except that it is admitted that the Halifax County Board of Education is organized under the laws of the State of North Carolina and exer-

cises such powers and duties as are granted by the laws of said state; that the Scotland Neck Administrative Unit and the Littleton-Lake Gaston School District were created by Acts of the legislature of the State of North Carolina and that W. Henry Overman is Superintendent of Schools of Halifax County.

4. The allegations of paragraph nine are denied; except that it is admitted that the Board of Commissioners of Halifax County exercise such powers and duties as are provided by law.

5. The allegations of paragraph ten are denied; except that it is admitted that the defendant Scotland Neck City Board of Education is a public body corporate.

6. The allegations of paragraph eleven are denied; except that it is admitted that the defendant Littleton-Lake Gaston School District is a public body corporate.

7. The allegations of paragraph twelve of the Complaint are denied; except that it is admitted that the North Carolina State Board of Education is an agency of the State of North Carolina and exercises such powers and duties as provided by the Constitution and laws of the State of North Carolina.

8. The allegations of paragraph thirteen of the Complaint are denied; except that it is admitted that the defendant A. Craig Phillips is the duly elected Superintendent of Public Instruction and that he exercises such powers and duties as provided by the Constitution and laws of the State of North Carolina.

9. That the allegations of paragraph fourteen of the Complaint in Intervention are denied.

10. That this defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs fifteen and sixteen of the Complaint in Intervention and, therefore, denies same.

11. That the allegations of paragraphs seventeen and eighteen of the Complaint in Intervention are denied.

12. That the allegations of paragraph nineteen of the Complaint in Intervention are denied; except that it is admitted that the General Assembly of 1969 established the Warrenton City Administrative Unit, the Littleton-

Lake Gaston School District, and the Scotland Neck Administrative Unit, as appears in the Acts establishing same, and that these enactments were opposed in the General Assembly by the Eastern Council of Community Affairs.

13. That this defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs twenty, twenty-one, twenty-two, twenty-three and twenty-four of the Complaint in Intervention and, therefore, denies same; except that it is admitted that the enactments of the Legislature of the State of North Carolina are of record and speak for themselves.

14. That this defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty of the Complaint in Intervention and, therefore, denies same.

15. That the allegations of paragraphs thirty-one, thirty-two, thirty-three, thirty-four and thirty-five of the Complaint in Intervention are denied.

16. That this defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs thirty-six, thirty-seven and thirty-eight of the Complaint in Intervention and, therefore, denies same.

17. That the allegations of paragraphs thirty-nine and forty of the Complaint in Intervention are denied.

18. That this defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph forty-one of the Compaint in Intervention and, therefore, denies same.

19. That the allegations of paragraph forty-two of the Complaint in Intervention are denied.

20. That this defendant has not knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph forty-three of the Complaint in Intervention and, therefore, denies same.

21. That the allegations of paragraph forty-four of the Complaint in Intervention are denied.

WHEREFORE, defendant Board of County Commissioners of Halifax County prays:

1. That the said cause of action alleging Chapters 31 and 628 of the 1969 Session laws of North Carolina are void and unconstitutional, and the said cause of action alleging the wrongful transfer of the Scotland Neck Junior High School property, and the said cause of action alleging discrimination against Pattie Black Cotton and other black teachers similarly situated, all three, be dismissed as against the defendant Board of County Commissioners of Halifax County for the reason that no claim upon which relief can be granted is stated against this defendant in any of the above three causes of action.

2. That the First Defense be treated as a complete bar in respect to any relief as against this defendant and in the event the said First Defense is not sustained that the Second Defense be treated as a complete defense on behalf of this defendant and that this action be dismissed as against this defendant, Board of County Commissioners of Halifax County.

3. That this defendant have and recover its costs and have such other and further relief as the Court deems to be proper and just.

/s/ Ron B. Parker
RON B. PARKER
Parker & Dickens
Attorneys at Law
102 S. Railroad Street
Infield, North Carolina 27823
Telephone No. 445-3652
Attorney for Board of County Commissioners of Halifax County

NORTH CAROLINA

HALIFAX COUNTY

VERIFICATION

Harry A. Branch, being duly sworn says:

That he is Chairman of the Board of County Commissioners of Halifax County; that he verifies this Answer; that he has read the foregoing Answer; that the same is true to his own knowledge except as to matters therein stated upon information and belief and as to such matters he believes it to be true.

/s/ Harry A. Branch
HARRY A. BRANCH
Chairman of the Board of
County Commissioners of
Halifax County

Subscribed and sworn to before me on this the 16th day of February, 1970.

/s/ Nelda C. Herbert
Notary Public
My Commission Expires: Jan. 4, 1971

[Caption Omitted]

ANSWER OF DEFENDANT, HALIFAX COUNTY BOARD OF EDUCATION TO THE COMPLAINT IN INTERVENTION AND AN AFFIRMATIVE PLEA THAT THE COURT DELAY FURTHER AND FINAL DETERMINATION OF ALL OTHER ISSUES RAISED HEREIN PENDING FINAL DETERMINATION OF THE CONSTITUTIONALITY OF THE ACT CREATING THE SCOTLAND NECK CITY SCHOOL ADMINISTRATIVE UNIT AND ALSO DELAY ANY FURTHER ORDER FOR IMPLEMENTATION OF ANY SCHOOL DESEGREGATION PLAN UNTIL JUNE 1, 1970.

FIRST COUNT

1. To the Intervener-Plaintiffs adoption of the allegations of the original complaint in this cause, this defendant repeats its pleadings in defense thereto including its Answer and Further Answer and Prayer heretofore filed.

2. This defendant denies that Intervener-Plaintiffs have invoked properly the jurisdiction of this court and therefore denies the allegations of this paragraph.

3. It is admitted that this is a proceeding seeking to restrain this defendant as is alleged in sub-sections 1-6 of Paragraph 3, but the allegations of each paragraph are denied.

With respect to the proceeding for a Declaratory Judgment in sub-paragraph a, b, c, d, and e of Paragraph 3, this defendant was in no way responsible for the enactment of the acts of the General Assembly referred to in sub-paragraphs a, b, and c, and denies the allegations of sub-paragraphs d and e.

4. It is admitted that the plaintiff, Pattie Black Cotton, is a black public school teacher, a citizen of the United States and the State of North Carolina and has been and is still a teacher with this defendant, but denies the other allegations of said paragraph.

5. It is admitted that the plaintiff, Edward M. Francis, is a negro and a citizen of the United States and

the State of North Carolina and a former teacher employed by this defendant, but the other allegations of this paragraph are denied.

6. This defendant does not have knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 and therefore denies the same.

7. This defendant does not have knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and therefore denies the same.

8. The allegations of Paragraph 8 are admitted.

9. The allegations of Paragraph 9 are admitted.

10. It is admitted that the defendant, Scotland Neck City Board of Education, is a public body corporate, but this defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations and therefore denies the same.

11. It is admitted that the Littleton-Lake Gaston School District is a public body corporate, but this defendant does not have knowledge or information sufficient to form a belief as to the truth of the other allegations of this paragraph and therefore denies the same.

12. It is admitted that the North Carolina State Board of Education is an agency of the State and exercises such powers and duties as provided by the Constitution and laws of the State of North Carolina; that except as herein admitted Paragraph 12 is denied.

13. It is admitted that the Defendant, A. Craig Phillips, is the duly elected Superintendent of Public Instruction, and that he exercises such powers and duties as provided by the Constitution and laws of the State of North Carolina; that except as admitted the allegations of Paragraph 13 are denied.

14. The allegations of Paragraph 14 are denied.

15. It is admitted that the plaintiff, Edward N. Francis, was teaching and that his teaching contract has been terminated, but the other allegations of this paragraph are denied.

16. It is admitted that Halifax County Board of Education is currently operating the Scotland Neck Schools, the other allegations of this paragraph are denied.

17. The allegations of Paragraph 17 are denied.

18. The allegations of Paragraph 18 are denied.

19. It is admitted that the 1969 Session of the North Carolina General Assembly enacted laws creating three new school administrative units, but the other allegations of Paragraph 19 are denied.

20. The allegations of Paragraph 20 are admitted.

21. The allegations of Paragraph 21 are not denied.

22. The allegations of Paragraph 22 are not denied.

23. The allegations of Paragraph 23 are not denied.

24. The allegations of Paragraph 24 are admitted.

25. The allegations of Paragraph 25 are denied.

26. This defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 26 and therefore denies the same.

27. This defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 27 and therefore denies the same.

28. This defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 28 and therefore denies the same.

29. The allegations of Paragraph 29, as therein alleged, are denied.

30. The allegations of Paragraph 30 are denied.

31. The allegations of Paragraph 31 are denied.

32. The allegations of Paragraph 32 are denied.

SECOND COUNT

33. This defendant here adopts and again alleges its answers to Paragraphs 1, 2, 3, 4, 8, 12, 13 and 14 of the First Count in the Complaint and hereby incorporates the same in this paragraph.

34. The allegations of Paragraph 34 are denied.

35. The allegations of Paragraph 35 are not denied.

36. This defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 36 and therefore denies the same.

37. This defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 37 and therefore denies the same.

38. The allegations of Paragraph 38 are admitted.

39. It is admitted that a hearing was held on June 12, 1969, and that Mrs. Elizabeth Hocksday appeared as a witness, but the other allegations of Paragraph 39 are denied.

40. The allegations of Paragraph 40 are denied.

41. The allegations of Paragraph 41 are admitted.

42. The allegations of Paragraph 42 are denied.

43. The allegations of Paragraph 43 are denied.

44. The allegations of Paragraph 44 are denied.

FIRST FURTHER ANSWER AND AN AFFIRMATIVE PLEA THAT THE COURT DELAY FURTHER AND FINAL DETERMINATION OF ALL OTHER ISSUES RAISED HEREIN PENDING FINAL DETERMINATION OF THE CONSTITUTIONALITY OF THE ACT CREATING THE SCOTLAND NECK CITY SCHOOL ADMINISTRATIVE UNIT AND ALSO DELAY ANY FURTHER ORDER FOR IMPLEMENTATION OF ANY SCHOOL DESEGREGATION PLAN UNTIL JUNE 1, 1970.

For a First Further Answer and an affirmative plea that the court delay further and final determination of all other issues raised herein pending final determination of the constitutionality of the act creating the Scotland Neck City School Administrative Unit and also delay any further order for implementation of any school desegregation plan until June 1, 1970, this defendant, alleges and says:

1. That there is a misjoinder of causes of action sought by the Intervener-Plaintiffs against this defendant in that the issue involving the constitutionality of the Legislative Act creating the Scotland Neck City School Administrative Unit is entirely separate and unrelated to the hiring and firing of teachers and to the CODE OF ETHICS OF THE EDUCATION PROFESSION as adopted by the National Education Associations and the Associations of the State of North Carolina.

2. The Intervener-Plaintiffs are not entitled to relief in this court as they have failed to exhaust their administrative remedies as set forth by rules, regulations and

Public Laws with respect to the employment of teachers and their administrative remedies for the alleged violations of the CODE OF ETHICS of the Education Association as adopted by the National Education Associations and the Associations of the State of North Carolina.

3. That this defendant cannot be held accountable for any violation of the CODE OF ETHICS among teachers, this being a matter solely between the Associations and the teacher alleged to have violated the Code or any part thereof.

4. That the Public Laws of North Carolina prescribe procedures to be followed for the firing or removal of teachers, which administrative procedures have not been followed or exhausted, though they would provide adequate relief.

5. That the Public Laws of North Carolina provide that State and County school officials shall decide the curriculum to be offered in each school, and this authority has not been supplemented or supplanted by the federal courts.

6. That the alleged criminal action against Pattie Black Cotton is still pending in the Superior Court of Halifax County and has not been finally adjudicated or appealed from. That said criminal action is a criminal matter and cannot be properly joined in this action.

7. That the question of the re-instatement of Edward M. Francis cannot be finally determined until the constitiutionality of the Scotland Neck City School Administrative Act is finally adjudicated. That the final determination of the constitutionality of that Act, plus the rapidly shifting population in the public schools of Halifax County, may increase or decrease, the demand for teachers and require a re-assignment of teachers, or non-renewal of a teacher's contract, depending on the number of students and the curriculum needs at that time. Thus it is now impossible to finally determine the employment of Edward M. Francis and any other teachers that might be affected.

8. That since the filing of the motion to intervene by the Intervener-Plaintiffs, and the Court's order allowing intervention, drastic changes have occurred, and will con-

tinue to occur in the immediate future, in the policies, guidelines, Rules and Regulations in the Justice Department; in the Department of Health, Education and Welfare; in the Congress; and, perhaps in the Supreme Court rulings; all of which are evident in the actions of Congress, statements of the Attorney General, statements of the President of the United States and the Vice President of the United States. That these changes have created and will continue to create hope for the preservation, improvement and re-establishment of the Public Schools, and particularly neighborhood schools, throughout the nation, and particularly in Halifax County.

That there is nothing in this case, from any of the parties, showing that transfers in mid-term are educationally sound, necessary or helpful, but there is voluminous evidence that integration would decrease, and irreparable damage done to all children if transfers are made in mid-term. That the parents of school children of Halifax County, through their new found hope and belief, that a solution acceptable to all races will result, from the joint efforts of the Congress, the President, the Vice President, the courts and the members of the President's Cabinet and the new Commission recently appointed by the President of the United States and chaired by the Vice President, would now be more adamant if changes were made in mid-year.

That the delay of the date of implementation until June 1, 1970, would allow a culmination and crystalization of the efforts of the various branches of government above set forth, and allow final and definitive decisions of the federal courts, thus allowing this court and this defendant to formulate new and final plans that would be in the best interest of all parties to this suit, and particularly to all the school children of Halifax County.

WHEREFORE, this defendant prays:

1. That the court grant the prayers of this defendant as set forth in its original Answer which prayers are numbered 1 through 5 and incorporated herein by reference.

2. That the relief sought by the Intervener-Plaintiffs be denied, and their each and every claim be dismissed as to this defendant.

3. That the court delay until June 1, 1970, or until later if the Court desires, any date of implementation for any plan of integration now before the court, or later submitted to the court, or devised by the court.

/s/ W. Lunsford Crew
W. LUNSFORD CREW,
Attorney for the Defendant,
Halifax County Board of
Education

[Caption Omitted]

ORDER

LARKINS, District Judge:

This cause coming on before the Court upon Plaintiff's second claim for relief, wherein Plaintiff seeks to require the Halifax County Board of Education to desegregate its school system on a basis other than freedom of choice, said issue in the second of two claims in the instant action having been severed by the Court; said cause is now before the Court separately for the determination of the Court.

SUMMARY

Pursuant to the oral directive of the Court upon a hearing of the issues raised by the first and second claims in the instant action on August 21-23, 1969, the Defendant Halifax County Board of Education filed, on October 15, 1969, a proposed plan for the desegregation of its schools on a basis other than "freedom of choice".

At a pre-trial conference held by this Court in chambers at Trenton, North Carolina, on November 3, 1969, counsel for Plaintiff stated orally their objections to Defendant's proposed plan; said objections being: (1) that the plan still used freedom of choice in the assignment of pupils; (2) that the minority to majority transfer system was not acceptable; (3) that the faculties were not desegregated; and (4) that the plan failed to provide a terminal date.

Thereupon, the Plaintiff moved that the Court order the Defendant to adopt and implement immediately the "Interim Plan" prepared by the North Carolina Department of Instruction.

The Court, taking the motion under advisement, directed that the Plaintiff's objections to the plan proposed by Defendant and the motion be submitted in writing within three or four days and directed that the Halifax County Board of Education inform the Court within thirty days why the "Interim Plan" could not be implemented at mid-year.

On November 21, 1969, the Court received a nine page report and summary of the reasons why the "Interim Plan" could or should not be implemented at mid-year.

On November 24, 1969, this Court entered an Order directing that the Halifax County Board of Education submit on or before December 15, 1969, a plan to terminate the present dual school system being operated in the county at once.

A hearing was scheduled by the Court to be held in the United States Courtroom in Raleigh on Thursday, December 18, 1969, at 9:30 A.M.

The Court amended the Order on December 4, 1969, to require of the Defendant that it submit with its plan on or before December 15, projected statistics for student bodies and faculty by race and school, and a map depicting any proposed zones or attendance areas for each school.

On December 15, 1969, this Court received from W. Lunsford Crew Esquire, counsel for the Halifax County Board of Education, a letter with enclosures including: copies of the original Interim Plan; copies of an amended Interim Plan; a map showing projected statistics for student bodies by race and proposed attendance zones; copies of projected statistics for faculty by race; and a resolution by the Halifax Board whereby they adopted the Interim Plan and requested that the State Division of School Planning make any modifications it might deem necessary.

The changes proposed in the amended Interim Plan do not relate to the four suggested attendance zones set up in the original "Interim Plan" or any other major aspects of said plan. Rather the amended portions relate only to grade origin and space usage in the individual schools.

Mr. Crew's letter indicated that the Board had decided that they were not able to come up with a plan that would be superior to the plan proposed by the State Division of School Planning; and that this was the reason for its adoption by resolution thereof.

However, counsel for Defendant Halifax County Board did again request that the effective date of the plan be

delayed until the end of the current school year—that date being on or about June 1, 1970.

The above-mentioned letter was read into the Record at a Hearing of the matter by the Court on December 19, 1969 in Raleigh, North Carolina and counsel for the Plaintiff were apprised of the contents thereof.

Defendant's reasons for asking delay of implementation included the alleged "irreparable damage to the education of the children" which would result from an earlier enforcement.

At the Hearing on December 19, 1969, Mr. Charles K. Howard, counsel for Plaintiff, again requested that the Court order Defendant to implement this revised Interim Plan at mid-year and in no event later than January 31, 1970.

Upon a full Hearing of the issues concerning the proposed desegregation of the Halifax County Schools, the Court having heard counsel for the Government and counsel for the Defendant, Halifax County Board of Education, adopted the proposed amended Interim Plan of the Halifax County Board of Education. A determination of the effective date of implementation of the plan was reserved by the Court pending determination of other matters involved in this action.

FINDINGS OF FACT

It appears to the Court that an implementation of the proposed interim plan of the Defendant Halifax County Board of Education at mid-year or at any time before the completion of the school year would have at least endangered if not in actuality irreparably damaged the quality of education received during the school year by all of the children of the County; be they Negro, American Indian or Caucasian. And the Court is mindful that these individuals are its most important consideration.

Therefore, it appears to the Court, that the request of the Plaintiff, taken as a Motion, should be denied, and that the request of Defendant Halifax County Board of Education, taken as a Motion, that the effective date of implementation be delayed until the end of the school

year—that date being on or about June 1, 1970, should be allowed.

ORDER

NOW THEREFORE, in accordance with the foregoing, it is:

ORDERED, that the Motion of Defendant be and the same is hereby, Allowed; and that the "Proposed Interim Plan" of the Defendant Halifax County Board of Education as prepared by the North Carolina Department of Instruction, subject to the secondary amendments of the Board included in their proposal to this Court, the same having been adopted by the Court be Implemented by the Board no later than June 1, 1970.

FURTHER ORDERED, that the Motion of Plaintiff for immediate implementation at mid-year be, and the same is hereby Denied; and,

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon all counsel of record.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
May 18th, 1970

[Caption Omitted]

OPINION AND ORDER

LARKINS, District Judge

SUMMARY

The subject of this opinion and one of the primary issues in this case is the constitutionality of Chapter 31 of the North Carolina Session Laws of 1969,[1] a local act which carved out of the Halifax County, North Carolina, school system a separate administrative unit for the operation of the public schools in Scotland Neck, a town with a population of approximately 3000 located in the southeastern section of Halifax County. The plaintiff contends that the act is unconstitutional and that its implementation should be permanently enjoined because the act is inconsistent with the State's duty under the Equal Protection Clause of the Fourteenth Amendment to dismantle its dual school system. Defendants Scotland Neck City Board of Education and the State of North Carolina contend that the act is not violative of the Fourteenth Amendment to the United States Constitution as interpreted by the Supreme Court of the United States.

This controversy came before the court upon the filing of plaintiff's complaint on June 16, 1969, attacking the

[1] Plaintiff, in its complaint, also challenged the constitutionality of defendant Halifax County Board of Education's pupil assignment plan on the grounds that the plan failed to establish a unitary non-racial school system as required by the mandate of the United States Supreme Court. Furthermore, the status of the Haliwa Indians in the new arrangement of school systems was raised by a complaint in intervention permitted to be filed by this Court on October 30, 1969, on behalf of the several hundred Haliwa Indians residing in Halifax and Warren Counties. Another third-party complaint in intervention, filed as of January 9, 1970, by order of this Court by two black public school teachers in Halifax County and a number of minor school children residing in the Scotland Neck City School System and the Littleton-Lake Gaston School System, made certain allegations about the treatment of black students and faculty members by the Halifax County Board of Education. None of the questions raised by these additional allegations have yet been ruled on by the Court.

constitutionality of Chapter 31 of the Session Laws of 1969 and seeking to require the Halifax County Board of Education to desegregate its school system. Following a three-day hearing on plaintiff's motion for a preliminary injunction in Raleigh, North Carolina, this court, on August 25, 1969, entered a Memorandum Opinion and Order enjoining the Scotland Neck City Board of Education additional defendants and its officers and agents, etc., from taking any further action pursuant to the provisions of Chapter 31 pending a final determination on the merits of the constitutional questions raised by plaintiff's challenge of the act.

On October 30, 1969, this Court allowed certain named Haliwa Indians to intervene and on November 3, 1969, this court entered an Order allowing Robert B. Morgan, Attorney General of North Carolian, to intervene as a defendant on behalf of the State of North Carolina.

On January 9, 1970 the court allowed the motion for leave to intervene on behalf of Pattie Black Cotton, Edward M. Francis and others, and ordered additional defendants named therein to plead within 20 days. This court scheduled a hearing on the merits of the constitutionality of Chapter 31 and similar questions in the case of *Turner et al.* v. *Warren County Board of Education et al.*, No. 1482, Raleigh Division, for Wednesday, December 17, 1969. A trial on the merits in this case and the *Turner et al* v. *Warren County Board of Education et al* case was conducted by this court on December 17 and 18, 1969. Following the trial, this court carefully considered the transcripts, exhibits, briefs, depositions and arguments of counsel; and, now being fully advised in the premises, the court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Scotland Neck, a small town with a present population of approximately 3000, is located in the southeastern corner of Halifax County, a rural and agricultural region of North Carolina which has a predominantly black population. The population of the town itself is approximately 50% white and 50% black.

The schools within the corporate limits of Scotland Neck were operated as a city administrative unit until 1936 at which time they became part of the Halifax County unit pursuant to a procedure authorized by the General Statutes of North Carolina.[2] The construction of the elementary school in 1903 and the high school in 1923 was financed entirely by local funds.

Following the consolidation with Halifax County in 1936, the schools of Scotland Neck were operated as part of a dual school system, completely segregated, until 1965, at which time the Halifax County Board of Education adopted a freedom-of-choice plan for the assignment of pupils. The county maintained the freedom-of-choice assignment plan for the next three years during which a few black students attended formerly all-white schools and no white students attended formerly all-black schools. For example, during the 1967-68 school year, all of the white students and 97% of the black students attended schools previously maintained for their own races. In that year, 10 of the 450 teachers in 18 schools were assigned across racial lines. About 35 black students attended the Scotland Neck schools during the 1967-68 school year.

On July 27, 1968, the United States Department of Justice, pursuant to its authority under Title IV of the Civil Rights Act of 1964, sent the Halifax County Board of Education a "notice letter" which advised that Halifax County had failed to disestablish its dual school system and that additional steps should be taken for the Board to be in compliance with the United States Supreme Court's decision in *Green* v. *School Board of New Kent County*, 391 U. S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968). Negotiations ensued between the attorneys for the Justice Department and the Halifax County School Board, and a tentative agreement was reached whereby the Board would disestablish the dual school system by the commencement of the 1969-70 school year and would implement certain intermediate steps at the beginning

[2] Formerly Article 18, Chapter 136, Public Laws 1923, now North Carolina General Statutes §§ 115-74 through 115-78.

of the 1968-69 school year. The Justice Department agreed to withhold suit in consideration of the promises made by the Board.

The negotiations and the Board's promise to desegregate its schools were well-publicized in the local press. The newspaper in Scotland Neck reported on August 9, 1968, that the county had been ordered to end its dual school system and that there were several forms of grade organization, such as zoning or pairing of schools, which would be more effective than the freedom-of-choice plan as a means of converting to a unitary non-racial school system. The portion of the agreement which affected the Scotland Neck schools, that is, the proposed combining of the seventh and eighth grades of the previously all-black Brawley school, just outside the corporate limits of Scotland Neck, with the all-white junior high, was also publicized in the Scotland Neck newspaper on August 16, 1968.

On or about July 1, 1968, in anticipation of their obligation to comply with the *Green* decision, the Halifax County Board of Education asked the North Carolina Department of Public Instruction to conduct a school survey to determine the steps necessary for the Board to meet its desegregation obligations and to recommend "the most effective organizational patterns for the county schools in order to insure the best education possible for the children." The survey, prepared in response to the request, was completed in December 1968. It recommended as an Interim Plan a combination of geographic zoning with grade reorganizations at some schools, including the pairing of the predominantly white Scotland Neck school and the all-black Brawley school with respect to certain grades. The Long Range plan suggested the construction of two new consolidated high schools to be financed by a proposed four million dollar bond issue. The survey also recommended that the county schools be consolidated with the schools in the city units of Roanoke Rapids and Weldon (two city administrative units also located within Halifax County). The Halifax County Board of Education subsequently declined to implement the plan which would have resulted in a majority of

black students in 17 of the 18 schools in the Halifax County system.[3]

The legislative bill proposing the creation of a separate administrative unit for the schools of Scotland Neck, according to its proponents, was designed in response to Scotland Neck residents' dissatisfaction with the way in which the Halifax County Board of Education had allowed the schools in Scotland Neck to deteriorate. Only one county-wide school bond issue had passed since 1936, and that was in 1957. At that time, the separate units in Roanoke Rapids and Weldon, on a per-pupil basis, received a total of $1,020,000, and Halifax County received $1,980,000 for capital outlay. None of the proceeds of the bond issue was spent on any schools within the corporate limits of Scotland Neck. If the Scotland Neck schools had been operated as a separate unit at that time, the unit would have received approximately $190,000 as its proportionate share of the bond proceeds.

In 1963, as a result of the latest state-wide bond issue, the Halifax County Board of Education received a total of $950,000 as its proportionate share of the proceeds. Mr. W. Henry Overman, Superintendent of the Halifax County schools, testified on deposition that none of this money had been spent or committed for any school within the corporate limits of Scotland Neck. (Overman's Deposition, pp. 184, 187). He also testified that Halifax County has gradually reduced the annual capital outlay tax for the schools from 63 cents per $100 valuation in 1957 to 27.5 cents per $100 valuation in the latest fiscal year. (Overman's Deposition, pp. 204-205).

In 1963, some of the leaders of Scotland Neck began to formulate plans for the creation of a separate administrative unit for the schools of Scotland Neck but were not able to crystallize these plans into a legislative bill prior to the expiration of the 1963 session of the North Carolina legislature. In 1965, the proponents of a separate

[3] Mr. Franklin P. Shields, a resident of Scotland Neck and chairman of the Scotland Neck City Board of Education, testified on deposition that he felt public opinion was against the Interim Plan because the people did not generally understand it, because they were generally opposed to change of any kind and because there were administrative difficulties in implementing the plan. (Shields' Deposition, pp. 18-23).

administrative unit did formulate a bill which would have provided for a separate unit for the administration of the schools in Scotland Neck and the four surrounding townships and would have provided for a supplemental tax of 25 cents on each $100 valuation throughout the new school district. The bill passed the House of Representatives but was defeated by the Senate, and it was the opinion of many in the Scotland Neck area that the defeat had been caused by the pressure of individuals residing in the townships outside the corporate limits of Scotland Neck.

In 1966, prompted by Mr. Henry Harrison, the only resident of Scotland Neck who was a member of the Halifax County Board of Education, a delegation consisting of Mr. Harrison, Mr. C. M. Moore, chairman of the Halifax County Board of Education, and Mr. Overman, Superintendent of the Halifax County schools, met with Dr. Pearce and some other staff members in the office of the North Carolina Superintendent of Public Instruction, the Division of School Planning, to get approval for the construction of a new high school and gymnasium in Scotland Neck to replace the old high school and the building being used as a combination auditorium and gymnasium. The new facilities would have been completely integrated. The Halifax County Board of Education supported the requested construction for Scotland Neck, but it was not approved by the Division of School Planning. (Overman's Deposition, pp. 178-180).

In 1968, the leaders of Scotland Neck again began to make plans for the creation of a separate administrative unit for the operation of the Scotland Neck schools. This time they planned to limit the boundaries of the new district to the town limits of Scotland Neck because of the feeling that it was the residents of the area outside Scotland Neck who had contributed to the defeat of the bill in 1965. In November, 1968, a group consisting of Frank Shields, the future chairman of the Scotland Neck City Board of Education, C. Kitchen Josey, Henry Harrison, and Thorne Gregory, the State representative from the area, visited the Tryon City unit, at that time the smallest school unit in the State with 823 students enrolled during the 1968-69 school year. At that time, 974

pupils were attending the schools within the corporate limits of Soctland Neck, and it was expected that, with transfers, any new administrative unit would have approximately the same number of pupils. It was felt that the Tryon City school was superior to any school in Halifax County, ranking 4th out of 160 units in the State in percentage of high school graduates attending college, 31st in pupil-teacher ratio and 12th in library books per pupil. The tax base of Tryon was approximately the same as the tax base of Scotland Neck, and the Tryon unit also had a supplementary tax of 50 cents per $100 valuation. The group received a copy of the Tryon budget and the curriculum and discussed with the Tryon officials the amount of money needed to operate the system. The trip was primarily to study the financial feasibility of creating the separate unit in Scotland Neck (Shields' Deposition, pp. 11-12, 59-60). The Scotland Neck leaders talked to no other professional educators (with the exception of State Superintendent Craig Phillips, who opposed the creation of a new unit) and conducted no other studies before proposing the introduction of a bill in the State legislature. (Henry Harrison's Deposition, pp. 57-9).

The actual bill creating the separate unit in Scotland Neck was drafted by the North Carolina Attorney General's office and was introduced as House Bill No. 22. After receiving the approval of the House Education Committee, the House Finance Committee and the Senate Finance Committee, the bill passed both houses by a substantial majority and was ratified as Chapter 31 of the North Carolina Session Laws on March 3, 1969.[4]

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[4] The actual title of Chapter 31 was:

AN ACT TO IMPROVE AND PROVIDE PUBLIC SCHOOLS OF A HIGHER STANDARD FOR THE RESIDENTS OF SCOTLAND NECK IN HALIFAX COUNTY. TO ESTABLISH THE SCOTLAND NECK CITY ADMINISTRATIVE UNIT, TO PROVIDE FOR THE ADMINISTRATION OF THE PUBLIC SCHOOLS IN SAID ADMINISTRATIVE UNIT, TO LEVY A SPECIAL TAX FOR THE PUBLIC SCHOOLS OF SAID ADMINISTRATIVE UNIT, ALL OF WHICH SHALL BE SUBJECT TO THE APPROVAL OF THE VOTERS IN A REFERENDUM OR SPECIAL ELECTION.

Chapter 31 was a local act which authorized the creation of a separate public school administrative unit to be known as the Scotland Neck City Administrative Unit pending approval by a majority of the voters of Scotland Neck in a special election to be held on April 8, 1969. The act also provided that, upon such approval, a special tax of 50 cents per $100 valuation be levied on property within the corporate limits of Scotland Neck, the school properties within the new system and all funds allocated for the operation of such schools be transferred from the Halifax County Board of Education to the new system and that the Mayor and Board of Commissioners of Scotland Neck be required to appoint a Board of Education to administer the new system.

Chapter 31 became operative on April 8, 1969, upon the approval of a majority of the voters of Scotland Neck. Of the 1305 registered voters, in a large turnout, 813 voted for approval, and 332 voted against the act. (Ferd Harrison's Deposition, pp. 16-21).

There was a mixed reaction to the bill by educators and the people of Halifax County. Most of the white leaders of Scotland Neck supported the bill. Mr. W. Henry Overman, Superintendent of the Halifax County Schools, was opposed to the bill. (Henry Harrison's Deposition, p. 12). Negro groups, specifically, one led by a Reverend Deloatche, generally opposed the bill, (Deposition of Aubrey Powell, black member of the Scotland Neck school board, p. 18). Craig Phillips, State Superintendent of Public Instruction and the only professional educator to testify against the bill in the legislature, opposed it on the grounds that it was contrary to the trend of consolidating school districts, (Phillips' Deposition, p. 23), and because the number of students in the unit would be less than the number which he thought should be a minimum for the efficient operation of a school unit. (Phillips' Deposition, pp. 58, 59, 87-88).

Following approval of the act by the voters of Scotland Neck, the Mayor and Board of Commissioners of the Town appointed a five-member Board of Education. The Board then hired Franklin B. Bailey as superintendent, approximated the student enrollment for the 1969-70 school year and hired teachers. The Board also had a

preregistration for students, established a curriculum, set up an athletic program and assigned teachers. At a two-day instruction session for teachers which began on August 18, 1969, the Board announced that new teachers should report on August 26th and that the students should report for the commencement of the school year on August 28th. The supplementary tax of 50 cents per $100 valuation was levied by the Board of Commissioners and the Town Tax Collector was instructed to collect it. (Ferd Harrison's Deposition, p. 22).[5]

At a joint meeting of the Halifax County and Scotland Neck school boards in June, the Halifax Board agreed to lease the Junior High School building which was just outside the boundaries of the new district to the Scotland Neck Board for one dollar per year. The Halifax Board has a similar arrangement with the Roanoke Rapids school unit with respect to the Chaloner school. The lease from Halifax County to Scotland Neck was first discussed at a joint meeting of the two boards in April or May. (C. M. Moore's deposition, pp. 25-26). The lease arrangement amounted to extending the boundaries of the Scotland Neck unit to include approximately 10 additional acres, and the extension was approved by the State Board of Education on June 5, 1969. (Deposition of Franklin B. Bailey, Superintendent of the Scotland Neck system, pp. 19-20, Overman's Deposition, pp. 63-64).

One controversial aspect of this case is a transfer plan devised by the Scotland Neck Board of Education whereby students would be allowed to transfer into or out of the Scotland Neck unit to and from the Halifax County unit.[6] Under the plan a student could transfer into the

[5] The collection of the tax of course when this Court's preliminary injunction was entered against further implementation of Chapter 31. Much to the credit of the citizens of Scotland Neck, the supporters of the bill have financed this litigation by voluntary donations contributed in response to a solicitation in the *Scotland Neck Commonwealth*, the local newspaper, on October 10, 1960.

[6] Both the Roanoke Rapids and the Weldon city units have similar transfer plans, but, recently, restrictions have been placed on the number of students permitted to transfer from Halifax County into the two systems. (Overman's deposition, pp. 166-169).

system if he paid a fee which would compensate for the supplemental tax being paid by the parents of those students residing within the corporate limits of Scotland Neck. One hundred dollars would be charged for the first child in a family; $25 for the next two children; and the rest of the children in a family would be allowed to transfer in free of charge. As of August 25, 1969, 350 whites and 10 blacks had applied for transfer into the Scotland Neck system, and 44 black 11th and 12th graders had applied to transfer out of the Scotland Neck unit to attend the all-black Brawley High School.[7] Because of the controversial nature of the transfer plan and the charge that the plan permitted the Scotland Neck system to become a refuge for white students or "white island," counsel for the Scotland Neck Board of Education in its First Further Answer attached to an Amended Answer filed on September 3, 1969, said the Scotland Neck unit, if permitted to operate, would limit its student enrollment to those students residing within the corporate limits of Scotland Neck plus or minus any transfers that may be permitted by law and that would be in accordance with a plan to be approved by this Court.[8]

The result of the creation of a separate administrative unit for Scotland Neck was to carve out of the Halifax County unit a smaller school district. Without the transfer system, there are 399 whites and 296 blacks of school age within the corporate limits of Scotland Neck. This does not include the children who would have entered the first grade in the fall of 1969. The Scotland

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[7] Counsel for the Scotland Neck City Board of Education explained that the transfer of these black students in the 11th and 12th grades would be permitted only for the next two years in order to allow the students who had bought class rings, participated in athletics or had been chosen to leadership positions to remain in the all-black Brawley High School.

[8] If the school district itself were found to be constitutional, it would not be difficult to fashion an acceptable transfer plan by either limiting transfers in and out such that the black-white ratio would be the same after accepting transfers or by accepting an equal number of blacks and whites. The problem of finding enough black students who could afford the transfer fees might be met by charging the paying transferees a higher fee.

Neck system would have been an integrated system throughout with black students comprising 42.6% of the student enrollment. There is one black member on the five-member school board, and the faculty would also be integrated. The effectuation of the proposed transfer plan would have created approximately the same ratio of white to black students that prevailed during the 1968-69 school year. In 1968-69, 786 whites attended Scotland Neck schools. Of those, 399 resided within the corporate limits and 387 resided outside Scotland Neck. With the transfer system as originally adopted, the net effect would have been to have 759 white students (74%) in the schools of Scotland Neck and 262 black students (26%). The school facilities under the jurisdiction of the new unit will accommodate about 1,000 students.

The effect of the new unit on the other students in the county would be to leave the Halifax County unit with fewer whites in its school system. During the 1968-69 school year, the Halifax unit had a total of 10,655 students, of which 2,357 (22%) were white, 8,196 (77%) were black and 102 (1%) were Indian. The racial composition of the Halifax unit, with the originally proposed transfer system, would be as follows: white, 1,598 (16%); black, 8,186 (83%); Indian, 102 (1%). If the transfer system were not allowed or if a transfer system were devised which assured a larger number of black students in the Scotland Neck unit, the figures and percentages of course would change accordingly. Mr. Overman, Superintendent of the Halifax schools, testified on deposition that the Interim Plan proposed in the 1968 survey prepared for the Halifax County system could still be implemented even if the constitutionality of the Scotland Neck district were upheld. (Overman's Deposition, pp. 144-151). He also testified that Halifax County would still get the same amount of money per pupil from State, Federal and local sources and that the county would have an even better pupil-teacher ratio in certain areas of instruction.

One of the principal questions in passing on the constitutionality of Chapter 31 relates to the motivation of the proponents and supporters of the Scotland Neck legislation. The plaintiffs contend that the motivation be-

hind the passsage of the act was simply a desire to decrease the proportion of black students in the Scotland Neck schools. The defendants submit that the primary reason for the legislation was a desire on the part of the people and leaders of Scotland Neck to increase the quality of education in the Scotland Neck schools. After closely scrutinizing the record and after carefully considering the arguments of counsel, this Court is of the opinion that the following motivating forces were responsible for the design of the legislation creating the separate Scotland Neck school district: (1) the desire to improve the educational level in the Scotland Neck schools, the present conditions in those schools having been brought about by a lengthy history of neglect and discrimination with respect to financial allocations to the Scotland Neck schools by the Halifax County Board of Education; (2) a desire on the part of the leaders of Scotland Neck to preserve a ratio of black to white students in the schools of Scotland Neck that would be acceptable to white parents and thereby prevent the flight of white students to the increasingly popular all-white private schools in the area; (3) a desire on the part of the people of Scotland Neck to control their own schools and be in a position to determine their direction with more finality than if the schools were a part of the Halifax County system. In ascertaining such a subjective factor as motivation and intent, it is of course impossible for this Court to accurately state what proportion each of the above reasons played in the minds of the proponents of the bill, the legislators or the voters of Scotland Neck, but it is sufficient to say that the record amply supports the proposition that each of the three played a significant role in the final passage and implementation of Chapter 31.

There is lengthy testimony supported by the historical treatment of the Scotland Neck schools by the Halifax County Board of Education to the effect that the primary reason for the new district was that the people of Scotland Neck felt they could have a better education system if they could have a separate school district, levy a supplemental tax upon themselves and exert more local con-

trol over the operation of the schools within the corporate limits of the town. Mr. Aubray Powell, the black member of the new Scotland Neck school board, testified on deposition that he thought the bill originated because the people of Scotland Neck thought it would provide a better education for their children. (Powell's Deposition, pp. 5-6). Mr. Powell said that the question of the private schools was never discussed among the school board of Scotland Neck and that the issue had never been mentioned to him. Dr. Craig Phillips said in his deposition that after discussing the bill with Josey, Harrison and Shields he was convinced that the major point of discussion and the reason for the proposed bill was "simply, concern about the quality of education for the youngsters involved in Scotland Neck." (Phillips' Deposition, p. 15). Mr. Henry Harrison, a strong proponent of the improvement of the Scotland Neck schools, testified that the people of Scotland Neck merely tried to improve the education of all the children, both black and white, and that it was his understanding that under the administration in the new school district, the dual school system would be abolished. (Henry Harrison's Deposition, pp. 40-41). Mr. Overman, Superintendent in Halifax County, in discussing the reasons behind the bill proposed in 1965, said that its purpose was to give the people of Scotland Neck more control over their schools and enable them to have a supplementary local tax. (Overman's Deposition, pp. 172-176). He also cited the decrease in the annual capital expenditure outlay tax from 63 cents to 27.5 cents per $100 valuation. (Overman's Deposition, pp. 204-205).

The testimony and the candid admissions of counsel also indicate that the desire to preserve an acceptable white ratio in the school system was a factor behind the passage of the act. Mr. Harrison stated that he told the legislature that white children were going to private schools and that something needed to be done to retain the support of the white people for the public schools. (Henry Harrison's Deposition, p. 18). Mr. Shields and Mr. Overman both testified that they felt that integration would encourage the growth of the all-white private schools. (Overman's Deposition, pp. 217-218, Shields'

Deposition, pp. 70-71). Mr. C. M. Moore said that it was his opinion that the independent school system would be a better alternative than the private schools. (Moore's Deposition, pp. 18-19). Mr. Shields testified to the same thing and said that most of the adults in Scotland Neck held the same opinion.
(Shields' Deposition, pp. 23-26).

One factor which the plaintiff has attempted to use as proof that the bill will produce an inferior school system and that, therefore, it could not have been put forth for educational reasons is that there is substantial opinion among educators that there are considerable educational advantages to be derived from the greater efficiency and better allocation of resources frequently associated with the operation of school units with larger numbers of pupils. However, the Court feels impelled to consider the points raised by the arguments of counsel for both sides because of the great amount of effort put forth by both sides to show why the proposed school district in Scotland Neck might or might not be better than the Halifax County system out of which it was carved.

Many educators agree in general principle with the suggestion made in the report of the Governor's Study Commission[9] that the merger of administrative units is a desirable thing because it frequently leads to the increased efficiency in the operation of the public schools. Mr. Overman testified that the North Carolina Teacher's Association approves the suggested number of 9,000-10,000 as a desirable pupil population and the suggested minimum of 3,500-4,000 in the size of school units as recommended on page 164 of the study commission's report. (Overman's Deposition, p. 72). Dr. Craig Phillips is also firmly committed to the policy of consolidation and

[9] The Report of the Governor's Study Commission on the Public School System of North Carolina is a 302-page report prepared by a 17-member commission appointed by Governor Dan K. Moore. The report was submitted December 3, 1968, and was prepared in response to the question "How best can the people of North Carolina meet their obligation to provide full educational opportunities for their children?" In conducting the study, the commission consulted experts, conducted research and visited a number of schools.

the advisability of reaching a 5,000 student population unit if possible and testified that the number of units in North Carolina has declined from a peak of 177 to the present number of 155. (Phillips' Deposition, pp. 35-36).

Further argument against the educational advantages of the new district is that the Scotland Neck school board did not actually make any plans to use the additional tax money for teachers' supplements. The only proposed change in salaries was to give the superintendent an $1800.00 per year supplement. There were plans to set up a curriculum study program in the fall of 1969 to determine which courses would be of most benefit to the students in the Scotland Neck system, but the only planned changes in the school curriculum for the 1969-70 school year was the elimination of the music course and some trade courses. (Powell's Deposition, pp. 23-24). There were no studies made prior to the introduction of the bill with respect to the educational advantages of the new district, and there was no actual planning as to how the supplement would be spent although some people assumed it would be spent on teachers' supplements.

The thing which makes it difficult for this Court to base its conclusions on the quality of education in the new unit is that there is so much conflict in the testimony. For example, Craig Phillips, although endorsing the trend toward mergers of school units, testified that he would ascribe very strongly to the statement on page 29 of the school survey of 1968[10] that "the one best single determinant in the quality program of education is the financial factor. . . ." He testified that many of the smaller units do turn out a better product than the larger units and that he was aware that units in the 823-2,000 pupil category rank higher in many significant categories than some of the larger units. (Phillips' Deposition, pp. 93-95). This Court also, in examining the rankings of the various schools with respect to many categories, notes that the smaller schools do rank higher in some rather

[10] A survey of the Halifax County schools prepared in September, 1968, by a seven-member committee under the supervision of the Division of School Planning in the North Carolina Department of Public Instruction and the direction of Dr. J. L. Pierce, Director.

significant categories and that the Halifax County unit ranks near the bottom in a number of the categories.[11]

Another factor worthy of mention is the plaintiff's introduction into evidence of several newspaper articles which discuss a supposed motivation for the bill. The articles taken from the *Raleigh News and Observer*, suggest that racial considerations, and not a concern for better education, motivated the legislation. For example, on February 2, 1969 the newspaper wrote that Halifax County Negroes outnumbered whites, that the reverse existed in Scotland Neck and that Halifax County Negroes had opposed the bill. On February 14, 1969, the

[11] The Profile of Significant Factors in Education in North Carolina, a ranking of school administrative units prepared in July, 1968, by the Statistical Services Division of the North Carolina Department of Public Instruction, shows that the Halifax system, the Tryon City system (smallest unit in the state), and the Tyrrell County system (small rural agricultural county) rank, in relation to the 166 units in the state and in the following categories, as follows:

	Tryon	Tyrrell	Halifax
1. % of classroom teachers with graduate certificates, Table 1, p. 1	59	98	120
2. % of professional staff paid entirely from local funds, Table 4, p. 13	54	87	135
3. % of classroom teachers with maximum experience for pay purposes, Table 5, p. 17	14	5	84
4. % of classroom teachers with no prior experience, Table 6, p. 21	160	38	12
5. % of high school graduates entering college, Table 7, p. 25	4	134	162
6. % of h. s. grads. entering trade, business or other schools, Table 8, p. 29	86	63	123
7. Pupil to staff ratio, Table 14, p. 49	31	69	138
8. Per pupil expenditures of local funds, Table 24, p. 89	48	109	125

paper commented editorially that the bill provided for an "educational island" dominated by whites and on February 22, 1969, suggested that if the bill passed, it would encourage other school districts to provide similar legislation. This Court has chosen to admit the newspaper articles for the purpose of showing that they did appear and not for the purpose of showing the truth of the information contained in them.[12]

CONCLUSIONS OF LAW

Three legal principles are applicable to an analysis of the constitutional issues now before this court. The first is that any federal court should be hesitant to declare a state statute unconstitutional. As stated in *Phillips Petroleum Company* v. *Jones*, 147 F. Supp. 122, 125 (D. Okla., 1955) (three-judge court):

> "Federal jurisdiction, though existent, will not be exercised to strike down a state statute unless it is clearly and palpably unconstitutional upon its face, the enforcement of which will cause immediate and irreparable harm to the complainant, as to which there is no legal or administrative remedy. . . ." [cites omitted]

There is similar language in numerous other cases, but, for reasons which need not be considered at this time, the principle has not been applied extensively in cases involving race, civil rights or school desegregation; and the principle is therefore of limited relevancy in resolving the questions now under consideration.

The second applicable principle relates to what the Supreme Court and the lower courts have said about what school boards and state and local school officials must do to guarantee black students their constitutional

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[12] Although there is authority for admitting the newspaper articles to show legislative intent where there are no other reports made contemporaneously with the passage of the act, *e.g.*, *United States* v. *Louisiana*, 225 F. Supp. 353, 375 n. 59 (E. D. La., 1963) (three-judge court), this Court has chosen to limit the admissibility of the articles as stated.

rights in the area of school desegregation. The relevant cases here would appear to be *Brown* v. *Board of Education* (Brown I), 347 U. S. 483, 98 L. Ed. 873, 74 S. Ct. 686 (1954), *Brown* v. *Board of Education* (Brown II), 349 U. S. 294, 99 L. Ed. 1083, 75 S. Ct. 753 (1955), *Green* v. *New Kent County School Board*, 391 U. S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968), *Alexander* v. *Holmes County Board of Education*, 396 U. S. 19, 24 L. Ed. 2d 19, 90 S. Ct. 29 (October 29, 1969). As this Court reads and interprets these relevant opinions, it would seem that the Supreme Court is concerned about establishing school systems which operate and assign their students to a particular school without regard to the student's race or color. Justice Brennan, speaking for the Court in the *Green* decision said the following:

> "It was . . . dual systems that 14 years ago Brown I held unconstitutional and a year later Brown II held must be abolished; . . . 391 U. S. at 435, 20 L. Ed. 2d at 722.

and

> "The transition to a unitary, non-racial system of public education was and is the ultimate end to be brought about; . . ." 391 U. S. at 436, 20 L. Ed. 2d at 722.

Brown II used the phrase "racially nondiscriminatory school system" and *Green* used the phrase "unitary nonracial school system" as the description of that which the constitution requires.

The requirement that school systems must be nonracial was injected with an air of immediacy by the *Green* decision in May, 1968. An even stronger demand for desegregation *now* was made in October, 1969, when the Court, in a per curiam opinion, *Alexander* v. *Holmes County Board of Education*, stated that the "all deliberate speed" standard was no longer applicable and that ". . . the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools." 24 L. Ed. 2d at 21.

As of the entry of this Opinion and Order the Supreme Court has failed to give an exact definition of a unitary nonracial school system. Although the Supreme Court has condemned gerrymandering, freedom-of-choice plans, free-transfer plans, and racially identifiable schools, student bodies or faculties which to retain the vestiges of the segregated dual system, no case has been brought to the attention of this Court (with the possible exception of the recent Georgia case) which requires any specific ratios of blacks to whites in a classroom, school or school district. Despite newspaper articles and perhaps some district court opinions to the contrary, the Supreme Court has not yet required bussing or population changes to effect particular black-white ratios in the schools. The emphasis of the Court has been on the nature of the school system and how it treats and assigns its students and faculty members. The Supreme Court has not yet concerned itself with the actual numbers of blacks and whites attending school together except where the numbers or percentages reflect that the school system is assigning its students or faculty or making some decisions on the basis of the race of the individuals involved.

The third legal principle relevant to the analysis of this case is that stated in *Gomillion* v. *Lightfoot*, 364 U.S. 339, 5 L. Ed. 2d 110, 81 S. Ct. 125 (1960) that "acts generally lawful may become unlawful when done to accomplish an unlawful end." In that case, the Supreme Court invalidated an Alabama statute which had redefined the boundaries of the City of Tuskagee to reduce the black vote. Legislative manipulation to affect the constitutional rights of blacks has been a familiar practice in several southern states in recent years, two examples being found in *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649 (E. D. La., 1961), and *Poindexter* v. *Louisiana Financial Assistance Commission*, 275 F. Supp. 833 (E. D. La., 1967), aff'd, 389 U. S. 571, 19 L. Ed. 2d 780, 88 S. Ct. 693 (1968), two cases by three-judge courts which struck down attempts by the Louisiana legislature to continue a segregated public school system under the guise of assistance payments to private school students.

Applying this principle to the assignment of pupils, the case of *Haney* v. *County School Board of Education of Seveir County*, 410 F. 2d 920 (8th Cir. 1969), becomes relevant. In that case, plaintiffs challenged the existence of an all-black school in one district of the county and an all-white school in a different district of the same county. The district court dismissed the complaint on the grounds that the districts had not been created for the purposes of denying plaintiffs their constitutional rights and were therefore valid. The court of appeals reversed the district court on the grounds that the creation of the districts, in accordance with a statutory reorganization of Arkansas schools in 1948 in accordance with the then-existing Arkansas law, was unconstitutional because the 1948 law required Arkansas schools to be segregated and the boundaries of the school districts were obviously drawn to continue the segregated schools. In this Court's opinion, the holding in the *Haney* case was simply that the maintenance of segregated schools cannot be justified "simply because of pre-*Brown* geographic structuring of school districts."

Also demonstrative of the Gomillion principle is the Supreme Court decision in *Monroe* v. *Board of Commissioners of the City of Jackson, Tennessee*, 391 U. S. 450, 20 L. Ed. 2d 733, 88 S. Ct. 1700 (1968), in which the Supreme Court struck down a free-transfer plan which enabled a child, after first registering at the assigned school in his attendance zone, to transfer to the school of his choice if space were available. The Court objected to the plan on the gorunds that it delayed the conversion to a unitary nonracial system where, after three years of operation under the plan, all of the whites remained in the white school and 80% of the blacks remained in the black school.

Perhaps the two most relevant, but still distinguishable cases are two district court decisions rendered within the last few months in Virginia and Arkansas. In *Burleson* v. *County Board of Election Commissioners of Jefferson County*, No. PB-69-C-65 (E. D. Ark., September 22, 1969), an opinion by District Judge J. Smith Henley, the plaintiffs, residents of the Dollarway School District,

challenged the implementation of the results of a local election which would have permitted the Hardin area of the district, a noncontiguous area with a 99%-white student population, to be severed from the district. The court enjoined the implementation of the election on the grounds that severance would impede the Dollarway School Board's efforts to comply with that court's order to integrate the schools and because the Board would have had difficulty in finding white teachers who would teach in the district if blacks greatly outnumbered whites. Also, the district would have lost some operating funds and there were no schools or other facilities in the Hardin area available for the school children in that area.

The second case is *Wright* v. *County School Board of Greensville County*, No. 4263 (E. D. Va., August 8, 1969), a decision by District Judge Robert R. Merhige. In that case, the Greensville County School Board was in the process of carrying out a court-ordered plan of desegregation, and the City Council and other officers of the City of Emporia, on July 9, 1969, convened a special meeting to establish a separate city school system. On July 10th, the mayor sought to buy or lease from the county the school buildings located within the city. At a July 14th meeting, after hearing the mayor express his dissatisfaction with the proposed plan of desegregation for the county, the City Council unanimously decided to instruct the City School Board to take steps to establish a separate school division for the city. On July 23rd, the City Council adopted a resolution requesting the State Board of Education to authorize the creation of a separate school division. The City School Board notified the county board that no city children would attend the county system thereafter and that the city would no longer share the costs of the county system. The plan of operation proposed by the City of Emporia would have afforded those students residing outside of the city the opportunity to attend the city schools on a "tuition-no transportation" basis. The members of the City School Board offered no assistance to the county board in the submission of a plan of desegregation to the district court.

The district court found as a matter of law that the City School Board, as successor to the Greensville County Board, was required to disestablish racial segregation in the school system in accordance with the plan approved by the court. The establishment and operation of a separate school system would have been an impermissible interference and frustration of the court's order.

Application of the constitutional case law to the issue before this Court, the separation of the Scotland Neck school unit from the larger Halifax County unit, creates a more difficult question than this Court has been able to find in any of the questions presented in the earlier cases. With the transfer system as it was originally proposed, this Court would probably have less difficulty in finding the scheme unconstitutional, because the Scotland Neck school district in view of the economics of the situation, that is, the inability of blacks to afford the transfer fees, would become a refuge or haven for those white students in the county who wished to escape the real or imagined disaster of a substantial black majority in the Halifax County System. Now that the defendant Scotland Neck City Board of Education, in its First Further Answer of September 3, 1969, has agreed to either eliminate the transfer system or adopt a system which would comply with the Board's constitutional obligations, the question has become even more difficult. What this Court is now faced with is assessing the results of the creation of the new unit strictly in terms of the effect it has on the relationship of those students residing within the corporate limits of Scotland Neck and those residing in Halifax County. The creation of the new unit does take some of the white students out of the Halifax County unit, and thereby does reduce the proportion of whites in a school system already top-heavy with black students.

It is apparent that Chapter 31, of the Session Laws of 1969 was enacted with the effect of creating a refuge for white students of the Halifax County School system, and interferes with the desegregation of the Halifax County School system, in accord with the plan adopted by said Board to be implemented on or before June 1, 1970.

THEREFORE, this Court's findings of fact that the legislative bill creating the district was at least partially motivated by a desire to stem the flight of white students from the public schools, the Court must find that the act is unconstitutional and in violation of the Equal Protection Clause of the 14th amendment and must enter permanent injunctive relief for the plaintiff.

Since the record in this case conclusively shows that the Act of the General Assembly creating the Scotland Neck unit in Halifax County serves no State interest and prevents the Halifax County Board of Education from complying with the orders of this court issued in protection of constitutional rights, it is the court's opinion that Chapter 31 of the North Carolina Session Laws of 1969 is unconstitutional. A judgment in accordance with this opinion will be entered by the court.

ORDER

NOW, THEREFORE, in accordance with the foregoing, it is:

ORDERED that the further implementation of Chapter 31 of the 1969 Session Laws of North Carolina be, and the same hereby is, permanently enjoined; and,

ORDERED that the Clerk shall serve copies of this OPINION and ORDER upon all counsel of record.

Let this ORDER be entered forthwith.

/s/ Algernon L. Butler
Chief Judge
United States District Court

/s/ John D. Larkins, Jr.
United States District Judge

May 23, 1970.

[Caption Omitted]

JUDGMENT

Upon consideration of the pleadings, evidence, briefs of counsel and oral arguments, the Court, for the reasons set forth in its Opinion and Order filed herein, ORDERS:

1. That Chapter 31 of the Session Laws of North Carolina 1969 creating the Scotland Neck Administrative Unit is declared to be unconstitutional and null and void.

2. That the defendants, their respective officers, agents, servants and employees be, and they are hereby permanently enjoined from any and all further proceedings pursuant to said statute.

This 23 day of May, 1970.

/s/ Algernon L. Butler
Chief Judge
United States District Court

/s/ John D. Larkins, Jr.
United States District Judge

[Caption Omitted]

AMENDED ORDER

For good cause shown, it is hereby ordered that the "Proposed Interim Plan" of the defendant, Halifax County Board of Education as prepared by the North Carolina Department of Instruction, subject to the secondary amendments of the Board included in their proposal to the court be amended by changing on Page 2 of said Interim Plan under District 4 that portion which reads "Aurelian Springs, Chaloner, and McIver—Use the combined 95 teaching stations to house pupils in grades 1-9 in their respective locations of the district. Everetts—This school (20 classrooms) is recommended for grades 1-8 only." to read as follows: "Aurelian Springs, Everetts, and McIver—Use the combined 85 teaching stations to house pupils in grades 1-8 in their respective locations of the district."

It is further ordered that the Order of this court dated May 18, 1970 is amended to read as follows:

"ORDERED that the Motion of Defendant be and the same is hereby, Allowed; and that the "Proposed Interim Plan" of the Defendant Halifax County Board of Education as prepared by the North Carolina Department of Instruction, subject to the secondary amendments of the Board included in their proposal to this Court, and any subsequent amendments approved by this Court, the same having been adopted by the Court be Implemented by the Board no later than June 1, 1970.

FURTHER ORDERED, that the Motion of Plaintiff for immediate implementation at mid-year be, and the same is hereby Denied; and,

FURTHER ORDERED, that the Clerk shall serve copies of this AMENDED ORDER upon all counsel of record.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina,
June 1st 1970

[Caption Omitted]

NOTICE OF APPEAL

Notice is hereby given that Scotland Neck City Board of Education, a body corporate, defendant above named, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the final Judgment entered May 26, 1970, declaring Chapter 31 of the 1969 Session Laws of North Carolina unconstitutional and from the Order entered May 26, 1970, permanently enjoining Chapter 31 of the 1969 Session Laws of North Carolina.

/s/ C. Kitchin Josey
C. KITCHIN JOSEY
105 West 11th Street
Scotland Neck, North Carolina

/s/ William T. Joyner
WILLIAM T. JOYNER

/s/ Walton K. Joyner
WALTON K. JOYNER
906 Wachovia Bank Building
Raleigh, North Carolina
Attorneys for Defendant

[Caption Omitted]

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT BY ROBERT MORGAN, Attorney General of North Carolina; NORTH CAROLINA STATE BOARD OF EDUCATION and DR. A. CRAIG PHILLIPS, State Superintendent of Public Instruction.

Notice is hereby given that Robert Morgan, Attorney General of North Carolina, the State Board of Education of North Carolina and Dr. A. Craig Phillips, North Carolina State Superintendent of Public Instruction, the State Defendants above named, hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Opinion and Order entered by the District Court of the United States for the Eastern District of North Carolina in this cause (No. 1128—Civil), dated May 23, 1970, and signed by Algernon L. Butler, Chief Judge of the United States District Court, and by John D. Larkins, Jr., United States District Judge, and from the Judgment in said cause also dated May 23, 1970, signed by said Algernon L. Butler, Chief Judge of the United States District Court for the Eastern District, and John D. Larkins, United States District Judge, which said Judgment was entered by virtue of the Opinion and Order above referred to. Said Appeal is entered under the applicable section of the United States Code allowing such appeals and applicable Rules of Civil Procedure.

This the 1st day of July, 1970.

/s/ Robert Morgan
Attorney General of
North Carolina

/s/ Ralph Moody
Deputy Attorney General

/s/ Andrew A. Vanore, Jr.
Assistant Attorney General

[Caption Omitted]

MOTION

Now comes the defendant, Halifax County Board of Education, and respectfully moves the Court:

That the "Proposed Interim Plan" of the defendant, Halifax County Board of Education, as prepared by the North Carolina Department of Instruction, subject to the secondary amendments of the Board included in its proposal to this Court and subject to an amendment to said Plan as ordered by this Court on June 1, 1970, be further amended as concerns District I and in accordance with a Map of said District, which Map is attached herewith as "Exhibit A," as follows:

> Pupils in grades one through eight living in District I will be assigned to the elementary school located in the attendance zone in which they live. Elementary schools located in District I are Bakers, Brawley, Dawson, Tillery Chapel, Thomas Shields and Scotland Neck.
>
> Pupils in grades nine through twelve living in the elementary attendance zones of Bakers, Brawley, Dawson, Tillery Chapel and Thomas Shields will be assigned to Brawley School and those living in the Scotland Neck elementary attendance zone will be assigned to Scotland Neck School. The Scotland Neck elementary attendance zone would be restricted to the present city limits of the town.

The movant, Halifax County Board of Education, gives as its reasons for making this Motion as follows:

The Scotland Neck City Board of Education, one of the defendants in this action, has given Notice of Appeal in one of the causes of action in this case in which this Court declared the act creating the Scotland Neck City Administrative Unit unconstitutional and enjoined the Scotland Neck City Board of Education from taking any action authorized by the Statute. To carry out the existing Interim Plan for District I as heretofore ordered by

this Court, the Halifax County Board of Education must immediately make substantial changes to the physical plants of the Scotland Neck School as well as the Brawley School; such as removing desks, blackboards, toilet facilities, library and text books for grades one through nine from Scotland Neck School and placing them in Brawley School and changing these same facilities for grades ten through twelve at Brawley School and placing them in the Scotland Neck School. Some vocational and commercial courses heretofore taught at Brawley School will be taught in Scotland Neck and hence some of the equipment and instructional material incidental to the teaching of these courses will be removed from Brawley School and placed in Scotland Neck School and some equipment and instructional material will be removed from Scotland Neck School to Brawley School. Renovations for laboratories, libraries, classrooms, shops, etc. will be required and moving of equipment necessary. Varsity athletic equipment as well as high school extracurricular activities and supplies must be removed from Brawley and space made available therefor in Scotland Neck School. Most staff and faculty connected with grades one through nine in Scotland Neck School must be assigned and transferred to other schools and most of the staff and faculty connected with grades ten through twelve in Brawley School must be assigned and transferred to Scotland Neck.

In the event that the Appellate Courts find the Statute creating the Scotland Neck City Administrative Unit constitutional, the reverse of the above would cause great expense and inconvenience.

It is the opinion of the Halifax County Board of Education that if the Plan under the present Order of the Court is implemented a substantial number of the staff and faculty originally hired by the Scotland Neck City Administrative Unit may not remain with the Halifax County Board of Education and may not be available for employment by the Scotland Neck City Board of Education upon that Board's being duly constituted and operative.

It is further the opinion of the Halifax County Board of Education that if this Motion is allowed there will in fact be more integration of the races in District I beginning in the fall of 1970 than there will in fact be under the present Plan and Order of the Court.

The Halifax County Board of Education further moves the Court that the above requested amendment to said Plan and Order of the Court be effective immediately and remain in effect through the school year during which a final determination of the constitutionality of the Statute creating the Scotland Neck City Administrative Unit is rendered in the highest Court of the United States to which an appeal is taken.

This the 24th day of June, 1970.

/s/ W. Lunsford Crew
W. LUNSFORD CREW
Attorney for Defendant,
Halifax County Board of
Education

[Caption Omitted]

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO AMEND INTERIM DESEGREGATION PLAN APPROVED MAY 19, 1970

The United States objects to the motion of the Halifax County Board of Education filed with the Court on June 25, 1970, which proposes to amend the Order of May 19, 1970, with respect to the operation of the Scotland Neck School and the Brawley School. Under the present Order Scotland Neck is to serve grades 10-12 and Brawley to serve grades 1-9 in the same attendance area henceforth. The Halifax County Board of Education (hereinafter the Board) now proposes to retain both Scotland Neck and Brawley as twelve grade facilities serving separate attendance areas, pending a ruling of the Circuit Court of Appeals for the Fourth Circuit on the appeal taken from this Court's Order of May 26, 1970, by the Scotland Neck City Board of Education and the Attorney General of North Carolina. The appeal seeks a reversal of this Court's Order permanently enjoining the further implementation of Chapter 31 of the 1969 Session Laws of North Carolina which established Scotland Neck as a separate administrative unit for the operation of the public schools in Scotland Neck. The United States objects to the motion on the following grounds:

1. In substance, the motion of the Board is a motion to stay implementation of that part of the Court's Order of May 19, 1970, which relates to the operation of the Scotland Neck and Brawley Schools. Accordingly, the motion is in direct conflict with current judicial standards requiring the immediate implementation of desegregation plans *pendente lite*. Stays of court orders which would result in the continued operation of dual schools are uniformly denied. *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1959); *Carter* v. *West Feliciana School Board*, 396 U.S. 290 (1970); *Nesbit* v. *Statesville City Board of Education*, 418 F.2d 1040 (4th Cir. 1969) (en banc) (per curiam); *Whittenberg* v. *School District of Greenville County*, 424 F.2d 195 (4th Cir. 1970); *Swann* v. *Charlotte-Macklenburg Board of Education*, F.2d , No. 14,517 (4th Cir., decided May 26, 1970); *Green* v. *School Board of the City of*

Roanoke, Virginia, F.2d , No. 14,335 (4th Cir., decided June 17, 1970); *United States* v. *School Board of Franklin City, Virginia,* F.2d , No. 14,276 (4th Cir., decided June 11, 1970); *Brewer* v. *The School Board of the City of Norfolk, Virginia,* F.2d , No. 14,544 (4th Cir., decided June 22, 1970). The pairing of Scotland Neck and Brawley required by the Order of May 19, recognizes that as separate twelve grade facilities these schools retain the trappings of dual schools based on race. If granted, the Board's motion would result in a continuation of the dual school system for the students attending these schools until "such time as a final determination of the constitutionality of the statute creating the Scotland Neck City Administrative Unit is rendered in the highest Court of the United States to which an appeal is taken." (Board's motion, p. 3). Such a result is constitutionally impermissible.

2. The administrative problems the Board asserts it will encounter in implementing that part of the May 19 Order relating to the pairing of the Scotland Neck and Brawley Schools, may not serve to delay the vindication of constitutional rights. *Alexander* v. *Holmes County Board of Education,* supra; *Carter* v. *West Feliciana School Board,* supra; *Whittenberg* v. *School District of Greenville County,* supra; *Coppedge* v. *Franklin County Board of Education,* 293 F. Supp. 356 (C.D.N.C. 1968), aff'd 404 F.2d 1177 (4th Cir. 1968).

WHEREFORE, the Plaintiff prays that this Court deny the motion of the Board to amend the Order of May 19, 1970, as modified by the Order of June 2, 1970. Plaintiff further prays that the Court grant a hearing on Plaintiff's objections to the Board's motion.

Respectfully submitted,

BRIAN K. LANDSBERG
LESLIE D. SMITH
ROBERT DEMPSEY
Attorneys
Department of Justice
Washington, D. C. 20530

[Caption Omitted]

ANSWER TO MOTION

Now comes the defendant, Scotland Neck City Board of Education, in Answer to the Motion of the Halifax County Board of Education dated the 24th day of June, 1970, and says that it does not object to said Motion and joins with the defendant, Halifax County Board of Education, in requesting the Court that said Motion be allowed for the reasons that:

If the Motion is not allowed, the physical school plant of this defendant must be almost completely revamped with all of the desks, toilet facilities, blackboards, books, instructional aids and extracurricular activities equipment of grades one through nine being physically removed and reinstalled in plants outside the Scotland Neck City Administrative Unit and the space now occupied by these classes being physically converted for use by senior high school students and their activities; all of the staff and faculty which were connected with grades one through nine during the past year would be assigned to a school outside the Scotland Neck City Administrative Unit and many of whom would probably not accept such reassignment and would be thereafter unavailable to teach in the public school and not be available for reassignment to the Scotland Neck City Administrative Unit if the Unit is ultimately found to be legally constituted; this defendant has not only given notice of appeal to the United States Court of Appeals for the Fourth Circuit but has heretofore filed a Motion with such Court requesting that the appeal be heard at the earliest possible date; based on the evidence presented at the trial of the case against the Scotland Neck City Board of Education and on the Findings of Fact by the United States District Court for the Eastern District of North Carolina and on the applicable law involved, it would appear that there are reasonable expectations that the law creating the Scotland Neck City Board of Education and its school unit will be held constitutional and in all respects lawful; in the event that said Statute is held con-

stitutional and the Scotland Neck City Administrative Unit becomes operative and the Motion is not allowed, a tremendous expense would be required by the Scotland Neck City Board of Education to recondition its school plant to properly provide for students in classes one through twelve; in addition, such decision of the Appellate Court may well come in the middle of a school term and such physical repairs as necessary would interrupt the education of the students for such a period of time as the repairs would require; a similar expense and interruption of classes would be experienced by certain schools of the Halifax County Board of Education; if the Motion is allowed and the Appellate Court finds the Scotland Neck School law constitutional, there would be no necessity for any changes in physical plants either by the Halifax County Board of Education or the Scotland Neck City Board of Education, there would be no expense involved and the education of the students would not be in any way interrupted, and for the most part the staff and faculty of the Scotland Neck School as well as certain schools of the defendant, Halifax County Board of Education, would be undisturbed; in addition to the above reasons, it is clear from the evidence in the Scotland Neck School case that even if the Statute creating the Scotland Neck School is found to be constitutional, enthusiastic support of all citizens of the town of Scotland Neck will be necessary in order to operate the City system of Schools with approximately an equal number of white and black students, and if this Motion is not allowed and the Schools of the town of Scotland Neck are physically and psychologically broken up, the future support of the citizens may well be more difficult to attain.

This the 14th day of July, 1970.

/s/ C. Kitchin Josey
C. KITCHIN JOSEY, One of the Attorneys for the Defendant, Scotland Neck City Board of Education

[Caption Omitted]

PLAINTIFFS' IN INTERVENTION OPPOSITION TO DEFENDANT'S MOTION TO AMEND INTERIM DESEGREGATION PLAN APPROVED MAY 19th, 1970.

Plaintiffs in Intervention, PATTIE BLACK COTTON, EDWARD M. FRANCIS, public school teachers, and black students in District 1, inside and outside of the Town Limits of Scotland Neck, N. C., join with the Plaintiff, UNITED STATES OF AMERICA, in opposition to the Motion of the Defendant, HALIFAX COUNTY BOARD OF EDUCATION, filed with the Court on June 25th, 1970 and proposing to Amend the Order of the Court entered May 19th, 1970 with respect to the operation of the Scotland Neck School, located inside of the Town Limits and the Brawley School, located at the edge of the Town Limits outside the Town of Scotland Neck. The Plaintiffs in Intervention object to the Defendant Board's Motion upon the following grounds:

1. That the Map, Exhibit "A" to the Motion of the Defendant, shows six (6) schools inside of District No. 1 and 658 white students to be assigned within the District and the assignment, if the amendment is allowed, being 399 or about 2/3 of the white student body, for the Scotland Neck School inside the Town Limits with only about 1/3 of the white student body being assigned to the other 5 schools where black students would in any event, constitute the largest number and made to constitute an even larger number by the limiting of white students inside of the Town Limits to the school located within the small town.

2. That the limiting of the school zone to the small student body inside of the Town of Scotland Neck as proposed by the Motion of the Defendant Board, would cause a continuation of the loss of Trade Courses and Teachers resulting from the small unit created by the school separation act declared unconstitutional by the Court and would prevent the re-instatement of teachers

and Trade Courses terminated as a result of the creation of the small school district declared unconstitutional.

3. That the approval of the Motion of the Defendant School Board, would give sanction and encouragement to faculity employment and assignment based upon race and color of the teacher and the majority of the student body and would deprive both students and teachers of the desegregation required by law.

WHEREFORE, the Plaintiffs in Intervention, pray that the Court deny the Motion of the Defendant School Board to amend the Order of May 19th, 1970 as amended by order of the Court on June 1, 1970.

Respectfully submitted,

James R. Walker, Jr.
501 West 3rd Street
Weldon, N. C.

Samuel S. Mitchell
126½ East Hargett Street
Raleigh, N. C.

/s/ By James R. Walker, Jr.
Attorneys for Plaintiffs in Intervention.

[Caption Omitted]

ORDER

LARKINS, District Judge:

This cause coming on before the Court upon defendants' motion, filed June 25, 1970, to amend the Order of May 19, 1970, with respect to the operation of the Scotland Neck School and the Brawley School District I of the Interim Desegregation Plan prepared by the North Carolina Department of Instruction, subject to the secondary amendment of the Board, which was adopted by the Court on December 19, 1969.

Under the present Order, Scotland Neck is to serve grades 10-12 and Brawley to serve grades 1-9 in the same attendance area. The defendants propose to retain both Scotland Neck and Brawley as twelve grade facilities serving separate attendance areas pending a ruling of the Circuit Court of Appeals for the Fourth Circuit on the appeal taken from this Court's Order of May 26, 1970, by the Scotland Neck City Board of Education and the Attorney General of North Carolina. The appeal seeks a reversal of this Court's Order permanently enjoining the further implementation of Chapter 31 of the 1969 Session Laws of North Carolina which established Scotland Neck as a separate administrative unit for the operation of the public schools in Scotland Neck.

A hearing on the motion of the defendants was held on July 21, 1970. Due consideration having been given to the motion of defendants, the documents filed with the Court, and the oral arguments of counsel for the United States, the Halifax County Board of Education, and the Scotland Neck City Board of Education respectively, it is hereby ORDERED as follows:

The motion of the defendants to amend the Order of May 19, 1970, with respect to the operation of the Scotland Neck School and the Brawley School is hereby Denied; and,

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon all counsel of record.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

Raleigh, North Carolina
July 21, 1970

HALIFAX COUNTY SCHOOLS

W. HENRY OVERMAN, SUPERINTENDENT
HALIFAX, N. C.

September 15, 1970

NORTH CAROLINA

HALIFAX COUNTY

W. Henry Overman, being duly sworn, says that:

1. He is Superintendent of Schools of the Halifax County School Administrative Unit, Halifax, N. C.
2. And that he has on September 15, 1970 received reports from all principals of schools in the Halifax County School Administrative Unit giving the latest enrollment of pupils by races as follows:

School and Grade	White	Negro	Indian	Total
Aurelian Springs (K 8)	318	583	6	907
Bakers (1-8)	0	266	0	266
Brawley (1-9)	226	650	0	876
Dawson (1-8)	26	421	0	447
Eastman (8-12)	0	709	68	777
Enfield (9-12)	63	418		481
Everetts (1-8)	309	406	0	715
Hollister (1-7)	0	283	138	421
Inborden (1-8)	52	1130	0	1182
McIver (1-8)	0	565	0	565
Pittman (1-7)	2	443	2	447
Scotland Neck (10-12)	91	524	0	615
Thomas Shields (1-8)	39	222	0	261
Tillery Chapel (1-8)	10	209	0	219
White Oak (1-7)	2	302	21	325
Wm. R. Davie (9-12)	302	585	0	887
	1440	7716	235	9391

/s/ W. Henry Overman

Presented to Court of Appeals by appellants, without objection, 9/16/70.

Sworn to and subscribed before me this 15 day of September, 1970.

/s/ Doris W. Netherbord
Notary Public

My commission expires: 9-9-75

HALIFAX COUNTY SCHOOLS

W. Henry Overman, Superintendent
Halifax, N. C. 27839

December 2, 1970

NORTH CAROLINA
HALIFAX COUNTY

W. Henry Overman, being duly sworn, says that:

1. He is Superintendent of Schools of the Halifax County School Administrative Unit, Halifax, N. C.
2. And that he has on December 2, 1970 received reports from all principals of schools in the Halifax County School Administrative Unit giving the latest enrollment of pupils by races as follows:

School and Grade	White	Negro	Indian	Total
Aurelian Springs (k-8)	324	562	6	892
Bakers (1-8)	0	266	0	266
Brawley (1-9)	212	670	0	882
Dawson (1-8)	23	419	0	442
Eastman (8-12)	0	690	62	752
Enfield (9-12)	66	423	0	489
Everetts (1-8)	333	385	0	718
Hollister (1-7)	0	270	151	421
Inborden (1-8)	54	1117	0	1171
McIver (1-8)	0	572	0	572
Pittman (1-7)	2	446	2	450
Scotland Neck (10-12)	93	538	0	631
Thomas Shields (1-8)	34	229	0	263
Tillery Chapel (1-8)	10	209	0	219
White Oak (1-7)	2	308	22	332
Wm. R. Davie (9-12)	300	636	0	936
	1453	7740	243	9436

/s/ W. Henry Overman

WHO:ar

Sworn to and subscribed before me this 2nd day of December, 1970.

/s/ Doris W. Netherland
Notary Public

My commission expires: 9-9-75

[Caption Omitted]

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilson. Algernon L. Butler, District Judge, and John D. Larkins, Jr., District Judge.

(Argued September 16, 1970)

Before BOREMAN, BRYAN and CRAVEN, Circuit Judges.

(Reargued December 7, 1970 Decided March 23, 1971)

Before HAYNSWORTH, Chief Judge, SOBELOFF, BOREMAN, BRYAN, WINTER, CRAVEN and BUTZNER, Circuit Judges sitting en banc, on resubmission.

William T. Joyner and C. Kitchin Josey (Joyner & Howison, and Robert Morgan, Attorney General of North Carolina, on brief) for Appellants; and Brian K. Landsberg, Attorney, Department of Justice (Jerris Leonard, Assistant Attorney General, David L. Norman, Deputy Assistant Attorney General, and Francis H. Kennedy, Jr., Attorney, Department of Justice, and Warren H. Coolidge, United States Attorney, on brief) for Appellee United States of America; and James R. Walker, Jr., (Samuel S. Mitchell on brief) for Appellees Pattie Black Cotton, et al.

CRAVEN, Circuit Judge:

The Scotland Neck City Board of Education and the State of North Carolina have appealed from an order of the United States District Court for the Eastern District of North Carolina entered May 23, 1970, declaring

Chapter 31 of the 1969 Session Laws of North Carolina unconstitutional and permanently enjoining any further implementation of the statute.[1] We reverse.

Chapter 31 of the 1969 Session Laws of North Carolina,[2] enacted by the North Carolina General Assembly

[1] This is one of three cases now before the Court involving the "carving out" of part of a larger school district. The others are Alvin Turner v. Littleton-Lake Gaston School District, —— F.2d —— (No. 14,990) and Wright v. Council of City of Emporia, —— F.2d —— (No. 14,552).

[2] Chapter 31 is entitled and reads as follows:

AN ACT TO IMPROVE AND PROVIDE PUBLIC SCHOOLS OF A HIGHER STANDARD FOR THE RESIDENTS OF SCOTLAND NECK IN HALIFAX COUNTY, TO ESTABLISH THE SCOTLAND NECK CITY ADMINISTRATIVE UNIT, TO PROVIDE FOR THE ADMINISTRATION OF THE PUBLIC SCHOOLS IN SAID ADMINISTRATIVE UNIT, TO LEVY A SPECIAL TAX FOR THE PUBLIC SCHOOLS OF SAID ADMINISTRATIVE UNIT, ALL OF WHICH SHALL BE SUBJECT TO THE APPROVAL OF THE VOTERS IN A REFERENDUM OR SPECIAL ELECTION.

Section 1. There is hereby classified and established a public school administrative unit to be known and designated as the Scotland Neck City Administrative Unit which shall consist of the territory or area lying and being within the boundaries or corporate limits of the Town of Scotland Neck in Halifax County, and the boundaries of said Scotland Neck City Administrative Unit shall be coterminous with the present corporate limits or boundaries of the Town of Scotland Neck. The governing board of said Scotland Neck City Administrative Unit shall be known and designated as the Scotland Neck City Board of Education, and said Scotland Neck City Board of Education (hereinafter referred to as: Board) shall have and exercise all of the powers, duties, privileges and authority granted and applicable to city administrative units and city boards of education as set forth in Chapter 115 of the General Statutes, as amended.

Section 2. The Board shall consist of five members appointed by the governing authority of the Town of Scotland Neck, and said five members shall hold office until the next regular municipal election of the Town of Scotland Neck to be held in May, 1971. At the regular election for Mayor and Commissioners of the Town of Scotland Neck to be held in May, 1971, there shall be elected five members of the Board, and three persons so elected who receive the highest number of votes shall hold office for four years and the two persons elected who receive the next highest number of votes shall hold office for two years, and thereafter all members

on March 3, 1969, provided for a new school district bounded by the city limits of Scotland Neck upon the approval of a majority of the voters of Scotland Neck in a referendum. The new school district was approved by the voters of Scotland Neck on April 8, 1969, by a vote of 813 to 332 out of a total of 1,305 registered

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of the Board so elected, as successors, shall hold office for four years. All members of the Board shall hold their offices until their sucessor (sic) are elected and qualified. All members of the Board shall be eligible to hold public office as required by the Constitution and laws of the State.

Section 3. All members of the Board shall be elected by the qualified voters of the Town of Scotland Neck and said election shall be held and conducted by the governing authority of the Town of Scotland Neck and by its election officials and pursuant to the same laws, rules and regulations as are applicable to the election of the municipal officials of the Town of Scotland Neck, and the results shall be certified in the same manner. The election of members of the Board shall be held at the same time and place as applicable to the election of the Mayor and Board of Commissioners of the Town of Scotland Neck and in accordance with the expiration of terms of office of members of the Board. The members of the Board so elected shall be inducted into office on the first Monday following the date of election, and the expense of the election of the members of the Board shall be paid by the Board.

Section 4. At the first meeting of the Board appointed as above set forth and of a new Board elected as herein provided, the Board shall organize by electing one of its members as chairman for a period of one year, or until his successor is elected and qualified. The chairman shall preside at the meetings of the Board, and in the event of his absence or sickness, the Board may appoint one of its members as temporary chairman. The Scotland Neck City Superintendent of Schools shall be ex officio secretary to his Board and shall keep the minutes of the Board but shall have no vote. If there exists a vacancy in the office of Superintendent, then the Board may appoint one of its members to serve temporarily as secretary to the Board. All vacancies in the membership of the Board by death, resignation, removal, change of residence or otherwise shall be filled by appointment by the governing authority of the Town of Scotland Neck of a person to serve for the unexpired term and until the next regular election for members of the Board when a successor shall be elected.

Section 5. All public school property, both real and personal, and all buildings, facilities, and equipment used for public school purposes, located within the corporate limits of Scotland Neck and within the boundaries set forth in Section 1 of this Act, and all records, books, moneys budgeted for said facilities, accounts,

voters. Prior to this date, Scotland Neck was part of the Halifax County school district. In July 1969, the United States Justice Department filed the complaint in this action against the Halifax County Board of Education seeking the disestablishment of a dual school system operated by the Board and seeking a declaration of in-

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papers, documents and property of any description shall become the property of Scotland Neck City Administrative Unit or the Board; all real estate belonging to the public schools located within the above-described boundaries is hereby granted, made over to, and automatically by force of this Act conveyed to the Board from the County public school authorities. The Board of Education of Halifax County is authorized and directed to execute any and all deeds, bills of sale, assignments or other documents that may be necessary to completely vest title to all such property to the Board.

Section 6. Subject to the approval of the voters residing within the boundaries set forth in Section 1 of this Act, or within the corporate limits of the Town of Scotland Neck, as hereinafter provided, the governing authority of the Town of Scotland Neck, in addition to all other taxes, is authorized and directed to levy annually a supplemental tax not to exceed Fifty Cents (50¢) on each One Hundred ($100.00) Dollars of the assessed value of the real and personal property taxable in said Town of Scotland Neck. The amount or rate of said tax shall be determined by the Board and said tax shall be collected by the Tax Collector of the Town of Scotland Neck and paid to the Treasurer of the Board. The Board may use the proceeds of the tax so collected to supplement any object or item in the school budget as fixed by law or to supplement any object or item in the Current Expense Fund or Capital Outlay Fund as fixed by law.

Section 7. Within ten days from the date of the ratification of this Act it shall be the duty of the governing authority of the Town of Scotland Neck to call a referendum or special election upon the question of whether or not said Scotland Neck City Administrative Unit and its administrative board shall be established and whether or not the special tax herein provided shall be levied and collected for the purposes herein provided. The notice of the special election shall be published once a week for two successive weeks in some newspaper published in the Town of Scotland Neck. The notice shall contain a brief statement of the purpose of the special election, the area in which it shall be held, and that a vote by a majority of those voting in favor of this Act will establish the Scotland Neck City Administrative Unit and its Administrative Board as herein set forth, and that an annual tax not to exceed Fifty Cents (50¢) on the assessed valuation of real and personal property, according to each One Hundred Dollars ($100.00) valuation, the rate to be fixed by the Board, will be levied as a supple-

validity and an injunction against the implementation of Chapter 31. Scotland Neck City Board of Education was added as a defendant in August 1969, and the Attorney General of North Carolina was added as a defendant in November 1969. On August 25, 1969, the District Court issued a temporary injunction restraining the implemen-

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mental tax in the Town of Scotland Neck, for the purpose of supplementing any lawful public school budgetary item. A new registration of voters shall not be required and in all respects the laws and regulations under which the municipal elections of the Town of Scotland Neck are held shall apply to said special election. The governing authority of the Town of Scotland Neck shall have the authority to enact reasonable rules and regulations for the necessary election books, records and other documents for such special election and to fix the necessary details of said special election.

Section 8. In said referendum or special election a ballot in form substantially as follows shall be used: VOTE FOR ONE:

( ) FOR creating and establishing Scotland Neck City Administrative Unit with administrative Board to operate public schools of said Unit and for supplemental tax not to exceed Fifty Cents (50¢) on the assessed valuation of real and personal property according to each One Hundred Dollars ($100.00) valuation for objects of school budget.

( ) AGAINST creating and establishing Scotland Neck City Administrative Unit with administrative Board to operate public schools of said Unit and against supplemental tax not to exceed Fifty Cents (50¢) on the assessed valuation of real and personal property according to each One Hundred Dollars ($100.00) valuation for objects of school budget.

If a majority of the qualified voters voting at such referendum or special election vote in favor of establishing Scotland Neck City Administrative Unit, for creation of administrative Board to operate public schools of said Unit and for special supplemental tax as herein set forth, then this Act shall become effective and operative as to all its provisions upon the date said special election results are canvassed and the result judicially determined, otherwise to be null and void. The expense of said referendum or special election shall be paid by the governing authority of the Town of Scotland Neck but if said Unit and Board are established, then said Town of Scotland Neck shall be reimbursed by the Board for said expense as soon as possible.

Section 9. All laws and clauses of laws in conflict with this Act are hereby repealed.

Section 10. This Act shall be in full force and effect according to its provisions from and after its ratification.

tation of Chapter 31, and thereafter on May 23, 1970, made the injunction permanent. The District Court reasoned that Chapter 31 was unconstitutional because it would create a refuge for white students and would interfere with the desegregation of the Halifax County school system.

It is clear that Chapter 31 is not unconstitutional on its face. But a facially constitutional statute may in the context of a given fact situation be applied unfairly or for a discriminatory purpose in violation of the equal protection clause of the Fourteenth Amendment. *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886). We cannot judge the validity of the statute in vacuo but must examine it in relation to the problem it was meant to solve. *Poindexter* v. *Louisiana Financial Assistance Commission*, 275 F. Supp. 833 (E.D. La. 1967).

I.

The History of School Desegregation in Halifax County and the Attempts to Secure a Separate School District for the City of Scotland Neck

For many years until 1936, the City of Scotland Neck was a wholly separate school district operating independently of the Halifax County school system into which it was then merged. Both the elementary and the high school buildings presently in use in Scotland Neck were constructed prior to 1936 and were financed by city funds.

Halifax County operated a completely segregated dual school system from 1936 to 1965. In 1965, Halifax County adopted a freedom-of-choice plan. Little integration resulted during the next three years. Shortly after the Supreme Court decision in *Green* v. *County School Board of New Kent County*, 391 U.S. 430, in May of 1968, the Halifax County Board of Education requested the North Carolina Department of Public Instruction to survey their schools and to make recommendations regarding desegregation of the school system.

In July 1968, the Justice Department sent a "notice letter" to the Halifax County Board notifying them that

they had not disestablished a dual school system and that further steps would be necessary to comply with *Green*. After negotiations with the Justice Department, the Halifax County Board agreed informally to disestablish their dual school system by the beginning of the 1969-70 school year, with a number of interim steps to be taken in the 1968-69 school year. As part of the interim steps, the seventh and eighth grades were transferred from the Brawley School, an all-black school located just outside the city limits of Scotland Neck, to the Scotland Neck School, previously all-white.

The results of the North Carolina Department of Public Instruction survey were published in December of 1968. It recommended an interim plan and a long range plan. The interim plan proposed the creation of a unitary school system through a combination of geographic attendance zones and pairing of previously all-white schools with previously all-black schools. Scotland Neck School was to be paired with Brawley School, grades 1-4 and 8-9 to attend Brawley and grades 5-6 and 10-12 to attend Scotland Neck. The long range plan called for the building of two new consolidated high schools, each to serve half of the geographic area composing the Halifax County school district. The Halifax County Board of Education declined to implement the plan proposed by the Department of Public Instruction and the Justice Department filed suit in July 1969.

Paralleling this history of school segregation in the Halifax County school system is a history of attempts on the part of the residents of Scotland Neck to obtain a separate school district. The proponents of a separate school district began to formulate their plans in 1963, five years prior to the *Green* decision and two years prior to the institution of freedom-of-choice by the Halifax County Board. They were unable to present their plan in the form of a bill prior to the expiration of the 1963 session of the North Carolina Legislature, but a bill was introduced in the 1965 session which would have created a separate school district composed of Scotland Neck and the four surrounding townships, funded partially through local supplemental property taxes. The bill

did not pass and it was the opinion of many of the Scotland Neck residents that its defeat was the result of opposition of individuals living outside the city limits of Scotland Neck.

At the instigation of the only Halifax County Board of Education member who was a resident of Scotland Neck, a delegation from the Halifax County schools attempted in 1966 to get approval for the construction of a new high school facility in Scotland Neck to be operated on a completely integrated basis. The proposal was not approved by the State Division of School Planning.

After visiting the smallest school district in the state to determine the economic feasibility of creating a separate unit for the City of Scotland Neck alone, the proponents of a separate school district again sponsored a bill in the Legislature. It was this bill which was eventually passed on March 31, 1969, as Chapter 31 of the Session Laws of 1969.

II.

The Three Purposes of Chapter 31

The District Court found that the proponents of a special school district had three purposes in mind in sponsoring Chapter 31 and the record supports these findings. First, they wanted more local control over their schools. Second, they wanted to increase the expenditures for their schools through local supplementary property taxes. Third, they wanted to prevent anticipated white fleeing of the public schools.

Local control and increased taxation were thought necessary to increase the quality of education in their schools. Previous efforts to upgrade Scotland Neck Schools had been frustrated. Always it seemed the needs of the County came before Scotland Neck. The only county-wide bond issue passed in Halifax County since 1936 was passed in 1957. Two local school districts operating in Halifax County received a total of $1,020,000 from the bond issue and the Halifax County system received $1,980,000. None of the money received by Halifax County was spent on schools within the city limits

of Scotland Neck. If Scotland Neck had been a separate school district at the time, it would have received $190,000 as its proportionate share of the bond issue. The Halifax County system also received $950,000 in 1963 as its proportionate share of the latest state-wide bond issue. None of this money was spent or committed to any of the schools within the city limits of Scotland Neck. Halifax County has reduced its annual capital outlay tax from 63 cents per $100 valuation in 1957 to 27.5 cents per $100 valuation in the latest fiscal year. In order for the referendum to pass under the terms of Chapter 31, the voters of Scotland Neck had to approve not only the creation of a separate school district but in addition had to authorize a local supplementary property tax not to exceed 50 cents per $100 valuation per year. Despite such a political albatross the referendum was favorable, and moreover, the supplementary tax was levied by the Scotland Neck Board at the full 50 cent rate.

III.

White Fleeing—The Questionable Third Purpose

But it is not the permissible first purpose or the clearly commendable second purpose which caused the District Court to question the constitutionality of Chapter 31. It is rather the third purpose, a desire on the part of the proponents of Chapter 31 to prevent, or at least diminish, the flight of white students from the public schools, that concerned the District Court. The population of Halifax County is predominantly black. The population of Scotland Neck is approximately 50 percent black and 50 percent white, and the District Court found that the pupil ratio by race in the schools would have been 57.3 percent white to 42.7 percent black.

A number of decisions have mentioned the problem of white flight following the integration of school systems which have a heavy majority of black students. *Monroe* v. *Board of Commissioners of the City of Jackson*, 391 U.S. 450, 459 (1968); *Brunson* v. *Board of Trustees of School District No. 1 of Clarendon County*, —— F.2d —— (4th Cir. 1970); *Walker* v. *County School Board*

of Brunswick County, 413 F.2d 53 (4th Cir. 1969); *Anthony* v. *Marshall County Board of Education*, 409 F.2d 1287 (5th Cir. 1969). All of these cases hold that the threat of white flight will not justify the continuing operation of a dual school system. But it has never been held by any court that a school board (or a state) may not constitutionally consider and adopt measures for the purpose of curbing or diminishing white flight from a unitary school system. Indeed it seems obvious that such a purpose is entirely consistent with and may help implement the *Brown* principle. It is not the purpose of preventing white flight which is the subject of judicial concern but rather the prices of achievement. If the effect of Chapter 31 is to continue a dual school system in Halifax County, or establish one in Scotland Neck, the laudable desire to stem an impending flow of white students from the public schools will not save it from constitutional infirmity. But if Chapter 31 does not have that effect, the desire of its proponents to halt white flight will not make an otherwise constitutional statute unconstitutional.

In considering the effect of Chapter 31 on school desegregation in Halifax County and Scotland Neck, it is important to distinguish the effect of Chapter 31 from the effect of a transfer plan adopted by the Scotland Neck Board of Education. The effect of the transfer plan was to substantially increase the percentage of white students in the Scotland Neck schools. But the transfer plan is solely the product of the Scotland Neck Board of Education and not Chapter 31. Therefore the effect of the transfer plan has no relevance to the question of the constitutionality of Chapter 31.[3]

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[3] Appellees argue that the creation of the transfer plan is evidence that the intended effect of Chapter 31 was to preserve the previous racial makeup of the Scotland Neck schools. We disagree.

We are concerned here with the intent of the North Carolina Legislature and not the intent of the Scotland Neck Board. In determining legislative intent of an act such as Chapter 31, it is appropriate to consider the reason that the proponents of the act desired its passage if it can be inferred that those reasons were made known to the Legislature. There is evidence in the record to show that the three purposes that the District Court found were

The District Court held that the creation of a separate Scotland Neck school district would unconstitutionally interfere with the implementation of a plan to desegregate the Halifax County schools adopted by the Halifax County Board of Education. We hold that the effect of the separation of the Scotland Neck schools and students on the desegregation of the remainder of the Halifax County system is minimal and insufficient to invalidate Chapter 31. During the 1968-69 school year, there were 10,655 students in the Halifax County Schools, 8,196 (77%) were black, 2,357 (22%) were white, and 102 (1%) were Indian. Of this total, 605 children of school age, 399 white and 296 black, lived within the city limits of Scotland Neck. Removing the Scotland Neck students from the Halifax County system would have left 7,900 (80%) black students, 1,958 (19%) white students, and 102 (1%) Indian students. This is a shift in the ratio of black to white students of only 3 percent, hardly a substantial change. Whether the Scotland Neck students remain within the Halifax County system or attend separate schools of their own, the Halifax County schools will have a substantial majority of black students. Nor would there be a per pupil decrease in the proceeds from the countywide property taxes available in the remaining Halifax County system. The county tax is levied on all property in the county and distributed among the various school districts in the county on a per pupil basis. In addition, the Superintendent of Schools for the Halifax County system testified that there would be no decrease in teacher-pupil ratio in the remaining Halifax County system and in fact that in a few special areas, such as speech therapy, the teacher-pupil ratio may actually increase.

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intended by the proponents of Chapter 31 were presented to the Legislature. However, there is nothing in the record to suggest that the Legislature had any idea that the Scotland Neck Board would adopt a transfer plan after the enactment of Chapter 31 which would have the effect of increasing the percentage of white students.

We will discuss the transfer plan later in a separate part of the opinion.

Nor can we agree with the District Court that Chapter 31 creates a refuge for the white students of the Halifax County system. Although there are more white students than black students in Scotland Neck, the white majority is not large, 57.3 percent white and 42.6 percent black. Since all students in the same grade would attend the same school, the system would be integrated throughout. There is no indication that the geographic boundaries were drawn to include white students and exclude black students as there has been in other cases where the courts have ordered integration across school district boundaries. *Haney* v. *County Board of Education of Sevier County*, 410 F.2d 920 (8th Cir. 1969). The city limits provide a natural geographic boundary. There is nothing in the record to suggest that the greater percentage of white students in Scotland Neck is a product of residential segregation resulting in part from state action. See *Brewer* v. *School Board of the City of Norfolk*, 397 F.2d 37 (4th Cir. 1968).

From the history surrounding the enactment of Chapter 31 and from the effect of Chapter 31 on school desegregation in Halifax County, we conclude that the purpose of Chapter 31 was not to invidiously discriminate against black students in Halifax County and that Chapter 31 does not violate the equal protection clause of the Fourteenth Amendment.

Appellees urge in their brief that conceptually the way to analyze this case is to "view the results of severance as if it were part of a desegregation plan for the original system." We do not agree. The severance was not part of a desegregation plan proposed by the school board but was instead an action by the Legislature redefining the boundaries of local governmental units. If the effect of this act was the continuance of a dual school system in Halifax County or the establishment of a dual system in Scotland Neck it would not withstand challenge under the equal protection clause, but we have concluded that it does not have that effect.

But assuming for the sake of argument that the appellees' method of analysis is correct, we conclude that the severance of Scotland Neck students would still

withstand constitutional challenge. Although it is not entirely clear from their brief, appellants' apparent contention is that the variance in the ratio of black to white students in Scotland Neck from the ratio in the Halifax County system as a whole is so substantial that if Scotland Neck was proposed as a geographic zone in a desegregation plan, the plan would have to be disapproved. The question of "whether, as a constitutional matter, any particular racial balance must be achieved in the schools" has yet to be decided by the courts. *Northcross* v. *Board of Education of Memphis*, —— U.S. ——, 90, S. Ct. 891, 893 (1970) (Burger, C.J., concurring). In its first discussion of remedies for school segregation, *Brown* v. *Board of Education of Topeka*, 349 U.S. 294 (1955) (Brown II), the Supreme Court spoke in terms of "practical flexibility" and "reconciling public and private needs." 349 U.S. at 300. In *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), the court made it clear that the school board has the burden of explaining its preference for a method of desegregation which is less effective in disestablishing a dual school system than another more promising method. Even if we assume that a more even racial balance throughout the schools of Halifax County would be more effective in creating a unitary school system, we conclude that the deviation is adequately explained by the inability of people of Scotland Neck to be able to increase the level of funding of the schools attended by their children when the geographic area served by those schools extended beyond the city limits of Scotland Neck.

Our conclusion that Chapter 31 is not unconstitutional leaves for consideration the transfer plan adopted by the Scotland Neck School Board. The transfer plan adopted by the Board provided for the transfer of students from the remaining Halifax County system into the Scotland Neck system and from the Scotland Neck system into the Halifax County system. Transfer into the Scotland Neck system were to pay $100 for the first child in a family, $25 for the next two children in a family, and no fee for the rest of the children in a family. As a result of this transfer plan, 350 white students and 10 black students applied for transfer into the Scotland Neck system, and

44 black students applied for transfer out of the system. The net result of these transfers would have been to have 74 percent white students and 26 percent black students in the Scotland Neck system. We conclude that these transfers would have tended toward establishment of a resegregated system and that the transfer plan violates the equal protection clause of the Fourteenth Amendment.[4] See *Monroe* v. *Board of Commissioners of the City of Jackson*, 391 U.S. 450 (1968).

We reverse the judgment of the District Court holding Chapter 31 unconstitutional, and remand to the District Court with instructions to dissolve its injunction. The District Court will retain jurisdiction to consider plans of integration proposed by Halifax County Board of Education and by Scotland Neck Board of Education.

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[4] Perhaps it should be noted that in the school board's amended answer filed on September 3, 1969, it withdrew the original transfer plan and represented to the District Court that it intended to allow only such transfers as "may be in conformity to the law and/or Court order or orders applicable to Defendant, and in conformity to a plan of limitation of transfers to be prepared by Defendant and submitted to this Court."

APPENDIX E

JUDGMENT

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 14,929

UNITED STATES OF AMERICA, AND PATTIE BLACK COTTON, EDWARD M. FRANCIS, PUBLIC SCHOOL TEACHERS OF HALIFAX COUNTY, ET AL., APPELLEES

v.

SCOTLAND NECK CITY BOARD OF EDUCATION, A BODY CORPORATE, APPELLANT

Appeal from the United States District Court for the Eastern District of North Carolina

This cause came on to be heard on the record from the United States District Court for the Eastern District of North Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed; and the case is remanded to the United States District Court for the Eastern District of North Carolina, at Wilson, with instructions to dissolve its injunction and retain jurisdiction to consider plans of integration proposed by Halifax County Board of Education and by Scotland Neck Board of Education.

SAMUEL W. PHILLIPS,
Clerk.

A True Copy, Teste:

SAMUEL W. PHILLIPS,
Clerk.

By DIANE HUDSON,
Deputy Clerk.

APPENDIX B

United States Court of Appeals for the Fourth Circuit

No. 14552

PECOLA ANNETTE WRIGHT, ET AL., APPELLEES

v.

COUNCIL OF THE CITY OF EMPORIA AND THE MEMBERS THEREOF, AND SCHOOL BOARD OF THE CITY OF EMPORIA AND THE MEMBERS THEREOF, APPELLANTS

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond

ROBERT R. MERHIGE, JR., District Judge

Argued October 8, 1970—Decided March 23, 1971

Before HAYNSWORTH, Chief Judge, BOREMAN, BRYAN, WINTER, and CRAVEN, Circuit Judges sitting en banc *

John F. Kay, Jr., and *D. Dortch Warriner* (*Warriner, Outten, Slagle & Barrett;* and *Mays, Valentine, Davenport & Moore* on brief) for Appellants, and *S. W. Tucker* (*Henry L. Marsh, III*, and *Hill, Tucker & Marsh;* and *Jack Greenberg, James M. Nabrit, III*, and *Norman Chachkin* on brief) for Appellees.

CRAVEN, *Circuit Judge:* In this case and two others now under submission en banc we must determine the extent of the power of state government to redesign the geographic boundaries of school districts.[1] Ordinarily, it would seem to be plenary but in school districts with a history of racial segregation enforced through state ac-

* Judge Sobeloff did not participate. Judge Butzner disqualified himself because he participated as a district judge in an earlier stage of this case.

[1] The other two cases are *United States* v. *Scotland Neck City Board of Education*, —— F. 2d ——, Nos. 14929 and 14930 (4th Cir. ——, 1971) and *Turner* v. *Littleton-Lake Gaston School District*, —— F. 2d ——, No. 14990 (4th Cir. ——, 1971).

tion, close scrutiny is required to assure there has not been gerrymandering for the purpose of perpetuating invidious discrimination.

Each of these cases involve a county school district in which there is a substantial majority of black students out of which was carved a new school district comprised of a city or a city plus an area surrounding the city. In each case, the resident students of the new city unit are approximately 50 percent black and 50 percent white. In each case, the district court enjoined the establishment of the new school district. In this case, we reverse.

I

If legislation creating a new school district produces a shift in the racial balance which is great enough to support an inference that the purpose of the legislation is to perpetuate segregation, and the district judge draws the inference, the enactment falls under the Fourteenth Amendment and the establishment of such a new school district must be enjoined. See *Gomillion* v. *Lightfoot*, 364 U.S. 399 (1960). Cf. *Haney* v. *County Board of Education of Sevier County*, 410 F. 2d 920 (8th Cir. 1969); *Burleson* v. *County Board of Election Commissioners of Jefferson County*, 308 F. Supp. 352 (E.D. Ark.) aff'd —— F. 2d ——, No. 20228 (8th Cir. Nov. 18, 1970). But where the shift is merely a modification of the racial ratio rather than effective resegregation the problem becomes more difficult.

The creation of new school districts may be desirable and/or necessary to promote the legitimate state interest of providing quality education for the state's children. The refusal to allow the creation of any new school districts where there is any change in the racial makeup of the school districts could seriously impair the state's ability to achieve this goal. At the same time, the history of school integration is replete with numerous examples of actions by state officials to impede the mandate of *Brown* v. *Board of Education*, 349 U.S. 294 (1955) (*Brown II*). There is serious danger that the creation of new school districts may prove to be yet an-

other method to obstruct the transition from racially separated school systems to school systems in which no child is denied the right to attend a school on the basis of race. Determining into which of these two categories a particular case fits requires a careful analysis of the facts of each case to discern the dominant purpose of boundary realignment. If the creation of a new school district is designed to further the aim of providing quality education and is attended secondarily by a modification of the racial balance, short of resegregation, the federal courts should not interfere. If, however, the primary purpose for creating a new school district is to retain as much of separation of the races as possible, the state has violated its affirmative constitutional duty to end state supported school segregation. The test is much easier to state than it is to apply.

II

Emporia became a city of the so-called second class on July 31, 1967, pursuant to a statutory procedure established at least as early as 1892. See 3 Va. Code § 15.1-978 to -998 (1950); Acts of the Assembly 1891-92, ch. 595. Prior to that time it was an incorporated town and as such was part of Greensville County. At the time city status was attained Greensville County was operating public schools under a freedom of choice plan approved by the district court, and *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), invalidating freedom of choice unless it "worked," could not have been anticipated by Emporia, and indeed, was not envisioned by this court. *Bowman* v. *County School Board of Charles City County* 382 F. 2d 326 (4th Cir. 1967). The record does not suggest that Emporia chose to become a city in order to prevent or diminish integration. Instead, the motivation appears to have been an unfair allocation of tax revenues by county officials.

One of the duties imposed on Emporia by the Virginia statutes as a city of the second class was to establish a school board to supervise the public education of the city's children. Under the Virginia statutes, Emporia had the option of operating its own school system or to

work out one of a number of alternatives under which its children would continue to attend school jointly with the county children. Emporia considered operating a separate school system but decided it would not be practical to do so immediately at the time of its independence. There was an effort to work out some form of joint operation with the Greensville County schools in which decision making power would be shared. The county refused. Emporia finally signed a contract with the county on April 10, 1968, under which the city school children would attend schools operated by the Greensville County School Board in exchange for a percentage of the school system's operating cost. Emporia agreed to this form of operation only when given an ultimatum by the county in March 1968 that it would stop educating the city children mid-term unless some agreement was reached.

At the same time that the county was engaged in its controversy with Emporia about the means of educating the city children, the county was also engaged in a controversy over the elimination of racial segregation in the county schools. Until sometime in 1968, Greensville County operated under a freedom of choice plan. At that time the plaintiffs in this action successfully urged upon the district court that the freedom of choice plan did not operate to disestablish the previously existing dual school system and thus was inadequate under *Green* v. *County School Board of New Kent County, supra.* After considering various alternatives, the district court, in an order dated June 25, 1969, paired all the schools in Greensville County.

Also in June 1969, Emporia was notified for the first time by counsel that in all probability its contract with the county for the education of the city children was void under state law. The city then filed an action in the state courts to have the contract declared void and notified the county that it was ending its contractual relationship forthwith. Parents of city school children were notified that their children would attend a city school system. On August 1, 1969, the plaintiffs filed a supplemental complaint seeking an injunction against the City Council and the City School Board to prevent the estab-

lishment of a separate school district. A preliminary injunction against the operation of a separate system was issued on August 8, 1969. The temporary injunction was made permanent on March 3, 1969.[2]

The Emporia city unit would not be a white island in an otherwise heavily black county. In fact, even in Emporia there will be a majority of black students in the public schools, 52 percent black to 48 percent white. Under the plan presented by Emporia to the district court, all of the students living within the city boundaries would attend a single high school and a single grade school. At the high school there would be a slight white majority, 48 percent black and 52 percent white, while in the grade school there would be a slight black majority, 54 percent black and 46 percent white. The city limits of Emporia provide a natural geographic boundary for a school district.

The student population of the Greensville County School District without the separation of the city unit is 66 percent black and 34 percent white. The students remaining in the geographic jurisdiction of the county unit after the separation would be 72 percent black and 28 percent white. Thus, the separation of the Emporia students would create a shift of the racial balance in the remaining county unit of 6 percent. Regardless of whether the city students attend a separate school system, there will be a substantial majority of black students in the county system.

Not only does the effect of the separation not demonstrate that the primary purpose of the separation was to perpetuate segregation, but there is strong evidence to the contrary. Indeed, the district court found that Emporia officials had other purposes in mind. Emporia hired Dr. Neil H. Tracey, a professor of education at the University of North Carolina, to evaluate the plan adopted by the district court for Greensville County and compare it with Emporia's proposal for its own school system. Dr. Tracey said his studies were made with the under-

[2] The decision of the court below is reported as *Wright* v. *County School Board of Greensville County*, 309 F. Supp. 671 (E.D. Va. 1970).

standing that it was not the intent of the city to resegregate. He testified that the plan adopted for Greensville County would require additional expenditures for transportation and that an examination of the proposed budget for the Greensville County Schools indicated that not only would the additional expenditures not be forthcoming but that the budget increase over the previous year would not even keep up with increased costs due to inflation. Emporia on the other hand proposed increased revenues to increase the quality of education for its students and in Dr. Tracey's opinion the proposed Emporia system would be educationally superior to the Greensville system. Emporia proposed lower student teacher ratios, increased per pupil expenditures, health services, adult education, and the addition of a kindergarten program.

In sum, Emporia's position, referred to by the district court as "uncontradicted," was that effective integration of the schools in the whole county would require increased expenditures in order to preserve education quality, that the county officials were unwilling to provide the necessary funds, and that therefore the city would accept the burden of educating the city children. In this context, it is important to note the unusual nature of the organization of city and county governments in Virginia. Cities and counties are completely independent, both politically and geographically. See *City of Richmond* v. *County Board*, 199 Va. 679, 684 (1958); *Murray* v. *Roanoke*, 192 Va. 321, 324 (1951). When Emporia was a town, it was politically part of the county and the people of Emporia were able to elect representatives to the county board of supervisors. When Emporia became a city, it was completely separated from the county and no longer has any representation on the county board. In order for Emporia to achieve an increase in school expenditures for city schools it would have to obtain the approval of the Greensville County Board of Supervisors whose constituents do not include city residents.

Determining what is desirable or necessary in terms of funding for quality education is the responsibility of state and school district officers and is not for our deter-

mination. The question that the federal courts must decide is, rather, what is the primary purpose of the proposed action of the state officials. See *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065 (1969). Is the primary purpose a benign one or is the claimed benign purpose merely a coverup for racial discrimination? The district court must, of course, consider evidence about the need for and efficacy of the proposed action to determine the good faith of the state officials' claim of benign purpose. In this case, the court did so and found explicitly that "[t]he city clearly contemplates a superior quality education program. It is anticipated that the cost will be such as to require higher tax payments by city residents." 309 F. Supp. at 671. Notably, there was no finding of discriminatory purpose, and instead the court noted its satisfaction that the city would, if permitted, operate its own system on a unitary basis.

We think the district court's injunction against the operation of a separate school district for the City of Emporia was improvidently entered and unnecessarily sacrifices legitimate and benign educational improvement. In his commendable concern to prevent resegregation—under whatever guise—the district judge momentarily overlooked, we think, his broad discretion in approving equitable remedies and the practical flexibility recommended by *Brown II* in reconciling public and private needs. We reverse the judgment of the district court and remand with instructions to disolve the injunction.

Because of the possibility that Emporia might institute a plan for transferring students into the city system from the county system resulting in resegregation,[3] or that the hiring of teachers to serve the Emporia school system might result in segregated faculties, the district court is directed to retain jurisdiction.

Reversed and remanded.

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[3] A notice of August 31, 1969, invited applications from the county. Subsequently, the city assured the district court it would not entertain such applications without court permission.

SOBELOFF, *Senior Circuit Judge*, with whom WINTER, *Circuit Judge*, joins, dissenting and concurring specially: In respect to Nos. 14929 and 14930, *United States* v. *Scotland Neck City Board of Education*, —— F. 2d —— (4th Cir. 1971), and No. 14990, *Turner* v. *Littleton-Lake Gaston School District*, —— F. 2d —— (4th Cir. 1971), the two cases in which I participated, I dissent from the court's reversal in *Scotland Neck* and concur in its affirmance in *Littleton-Lake Gaston*. I would affirm the District Court in each of those cases. I join in Judge Winter's opinion, and since he has treated the facts analytically and in detail, I find it unnecessary to repeat them except as required in the course of discussion. Not having participated in No. 14552, *Wright* v. *Council of City of Emporia*, —— F. 2d —— (4th Cir. 1971), I do not vote on that appeal, although the views set forth below necessarily reflect on that decision as well, since the principles enunciated by the majority in that case are held to govern the legal issue common to all three of these school cases.

I

The history of the evasive tactics pursued by white communities to avoid the mandate of *Brown* v. *Board of Education*, 349 U.S. 294 (1955), is well documented. These have ranged from outright nullification by means of massive resistance laws[1] and open and occasionally violent defiance,[2] through discretionary pupil assignment

[1] *See Duckworth* v. *James*, 267 F. 2d 224 (4th Cir. 1959); *Bush* v. *Orleans Parish School Bd.*, 188 F. Supp. 916 (E.D. La. 1960), *aff'd per curiam*, 365 U.S. 569 (1961); *Bush* v. *Orleans Parish School Bd.*, 187 F. Supp. 42 (E.D. La. 1960), *aff'd Per curiam*, 365 U.S. 569 (1961); *Aaron* v. *McKinley*, 173 F. Supp. 944 (E.D. Ark. 1959); *aff'd sub nom., Faubus* v. *Aaron*, 361 U.S. 197 (1959); *James* v. *Almond*, 170 F. Supp. 331 (E.D. Va. 1959), *app. dis.*, 359 U.S. 1006 (1959); *Harrison* v. *Day*, 200 Va. 439, 106 S.E. 2d 636 (1959) (decided the same day as *James* v. *Almond*, *supra*).

[2] *See Cooper* v. *Aaron*, 358 U.S. 1 (1958); *Armstrong* v. *Board of Education of City of Birmingham, Ala.* 323 F. 2d 333 (5th Cir. 1963), *cert. denied sub nom., Gibson* v. *Harris*, 376 U.S. 908 (1964);

laws[3] and public tuition grants in support of private segregated schools,[4] to token integration plans parading under the banner "freedom-of-choice."[5] One by one these devices have been condemned by the Supreme Court:

> [T]he constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." *Cooper* v. *Aaron*, 358 U.S. 1, 17 (1958).

Neither these agencies, nor school boards, nor local communities have the right to put roadblocks in the way of effective integration. The Court has declared that "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools." *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969).

Today, I fear, we behold the emergence of a further stratagem—the carving out of new school districts in order to achieve racial compositions more acceptable to the white community. The majority frankly acknowledges the "serious danger that the creation of new school district may prove to be yet another method to obstruct

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Brewer v. *Hoxie School District No. 46*, 238 F. 2d 91 (8th Cir. 1956); *Holmes* v. *Danner*, 191 F. Supp. 394 (M.D. Ga. 1961), *stay denied*, 364 U.S. 939 (1961).

[3] *See Northcross* v. *Board of Education of City of Memphis*, 302 F. 2d 818 (6th Cir. 1962); *Manning* v. *Board of Public Instruction*, 277 F. 2d 370 (5th Cir. 1960); *Gibson* v. *Board of Public Instruction, Dade County, Fla.*, 272 F. 2d 763 (5th Cir. 1959); *Orleans Parish School Board* v. *Bush*, 242 F. 2d 156 (5th Cir. 1957); *United States Commission on Civil Rights, Civil Rights USA—Public Schools, Southern States*, 2-17 (1962).

[4] *See Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649 (E.D. La. 1961), *aff'd*, 368 U.S. 515 (1962).

[5] *See Green* v. *County School Board*, 391 U.S. 430 (1968); *Raney* v. *Board of Education*, 391 U.S. 443 (1968); *Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968).

the transition from racially separate school systems to school systems in which no child is denied the right to attend a school on the basis of race," *Emporia, supra* at 4. However, the court fashions a new and entirely inappropriate doctrine to avert that danger. It directs District Courts to weigh and assess the various purposes that may have moved the proponents of the new school district, with the objective of determining which purpose is dominant. District Courts are told to intercede *only* if they find that racial considerations were the *primary* purpose in the creation of the new school units.[6] I find no precedent for this test and it is neither broad enough nor rigorous enough to fulfill the Constitution's mandate. Moreover, it cannot succeed in attaining even its intended reach, since resistant white enclaves will quickly learn how to structure a proper record—shrill with protestations of good intent, all consideration of racial factors muted beyond the range of the court's ears.[7]

If challenged state action has a racially discriminatory effect, it violates the equal protection clause unless a compelling and overriding legitimate state interest is demonstrated. This test is more easily applied, more fully implements the prohibition of the Fourteenth Amendment and has already gained firm root in the law. The Supreme Court has explicitly applied this test to state criminal statutes which on their face establish racial classifications. In 1964, striking down a Florida criminal statute which forbade a man and woman of different races to "habitually live in and occupy in the nighttime

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[6] The majority's test as stated in *Emporia, supra*, is as follows: "Is the primary purpose a benign one or is the claimed benign purpose merely a cover-up for racial discrimination?"

[7] The impracticability of the majority's test is highlighted by the dilemma in which the District Judges found themselves in *Scotland Neck:* "In ascertaining such a subjective factor as motivation and intent, it is of course impossible for this Court to accurately state what proportion each of the above reasons played in the minds of the proponents of the bill, the legislators or the voters of Scotland Neck * * *. *United States* v. *Halifax County Board of Education*, 314 F. Supp. 65, 72 (E.D.N.C. 1970)."

the same room," the Court stated in an opinion written by Justice White:

> Normally, the widest discretion is allowed the legislative judgment * * *, and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious. [Citations] But we deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications "constitutionally suspect," *Bolling* v. *Sharpe*, 347 U.S. 497, 499; and subject to the most "rigid scrutiny," *Korematsu* v. *United States*, 323 U.S. 214, 216; and "in most circumstances irrelevant" to any constitutionally acceptable legislative purpose, *Hirabayashi* v. *United States*, 320 U.S. 810, 100.

McLaughlin v. *Florida*, 379 U.S. 184, 191-92 (1964). Thus, the Court held that the proper test to apply in that case was "whether there *clearly appears* in the relevant materials some *overriding* statutory purpose *requiring* the proscription of the specified conduct when engaged in by a white and a Negro, but not otherwise." *Id.* at 192 [emphasis added]. To the further argument that the Florida statute should be upheld because ancillary to and serving the same purpose as an anti-miscegenation statute presumed valid for the purpose of the case, the Court replied:

> There is involved here an exercise of the state police power which trenches upon the constitutionally protected freedom from invidious official discrimination based on race. Such a law, even though enacted pursuant to a valid state interest, bears a heavy burden of justification, as we have said, and will be upheld only if it is *necessary*, and not merely rationally related, to the accomplishment of a permissible state policy. *Id.* at 196 [emphasis added].

There were no dissents in the *McLaughlin* case. The two concurring opinions serve to underline and buttress the test applied by the majority. Justice Harlan, joining the Court's opinion, added:

> I agree with the Court * * * that necessity, not mere reasonable relationship, is the proper test, see *ante*, pp. 195-196. *NAACP* v. *Alabama*, 377 U.S. 288, 307-308; *Sala* v. *New York*, 334 U.S. 558, 562; *Martin* v. *Struthers*, 319 U.S. 141, 147; *Thornhill* v. *Alabama*, 310 U.S. 88, 96; *Schneider* v. *State*, 308 U.S. 147, 161, 162, 164; see *McGowan* v. *Maryland*, 366 U.S. 420, 466-467 (Frankfurter, J., concurring).
>
> The fact that these cases arose under the principles of the First Amendment does not make them inapplicable here. Principles of free speech are carried to the States only through the Fourteenth Amendment. The necessity test which developed to protect free speech against state infringement should be equally applicable in a case involving state racial discrimination—prohibition of which lies at the very heart of the Fourteenth Amendment.

Id. at 197. Justice Stewart, speaking for himself and Justice Douglas, expressed the view that the majority's test did not go far enough as applied to a *criminal* statute because no overriding state purpose *could* exist.

> * * * I cannot conceive of a valid legislative purpose under our Constitution for a state law which makes the color of a person's skin the test of whether his conduct is a criminal offense. * * * I think it is simply not possible for a state law to be valid under our Constitution which makes the criminality of an act depend upon the race of the actor.

Id. at 198.

Three years later the Court dealt with a Virginia statute prohibiting interracial marriages. The statute was determined to be unconstitutional under the *McLaughlin* test, expressed here in these terms:

> At the very least, the Equal Protection Clause demands that racial classifications, especially sus-

> pect in criminal statutes, be subjected to the "most rigid scrutiny," *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944), and, if they are *ever* to be upheld, they must be shown to be *necessary* to the accomplishment of some permissible state objective, independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate.
> * * *
>
> There is patently no legitimate *overriding* purpose independent of invidious racial discrimination which justifies this classification.

Loving v. *Virginia*, 388 U.S. 1, 11 (1967) [emphasis added]. Justice Stewart filed a separate concurring opinion—reiterating his belief that there could never be a sufficiently compelling state purpose to justify a criminal statute based on racial classification. *Id.* at 13.

Although *McLaughlin* and *Loving* dealt with criminal statutes and express racial classifications, numerous lower court decisions apply the strict "compelling" or "overriding" purpose standard in the civil area as well as the criminal, and extend its application to facially neutral state action which, in reality, is racially discriminatory in its effect. The definitive case is *Jackson* v. *Godwin*, 400 F. 2d 529 (5th Cir. 1968), in which Judge Tuttle meticulously and exhaustively examines the lower court cases, including those "which have struck down rules and regulations which on their face appear to be non-discriminatory but which *in practice and effect*, if not purposeful design, impose a heavy burden on Negroes and not on whites, and operate in a racially discriminatory manner." *Id.* at 538-39 [emphasis added]. He concludes his analysis with this formulation of the constitutional standard:

> In both the areas of racial classification and discrimination and First Amendment freedoms, we have pointed out that stringent standards are to be applied to governmental restrictions in these areas, and rigid scrutiny must be brought to bear on the justifications for encroachments on such rights. The State must strongly show some substantial and con-

> trolling interest which requires the subordination or limitation of those important constitutional rights, and which justifies their infringement, [citations]; and in the absence of such compelling justification the state restrictions are impermissible infringements of these fundamental and preferred rights. *Id.* at 541.

The most recent application of the "compelling and overriding state interest" test is to be found in the Fifth Circuit's decision in *Hawkins* v. *Town of Shaw*, F. 2d (5th Cir. 1971). The plaintiffs, Negro residents of Shaw, Mississippi, alleged racial discrimination by town officials in the provision of various municipal services. The District Court dismissed the complaint, applying a test akin to that used by the majority in this case: "If actions of public officials are shown to have rested upon rational considerations, irrespective of race or poverty, they are not within the condemnation of the Fourteenth Amendment, and may not be properly condemned upon judicial review." *Hawkins* v. *Town of Shaw*, 303 F. Supp. 1162, 1168 (N.D. Miss. 1969). The Fifth Circuit reversed, pointing to the standard set forth in *Jackson* v. *Godwin*, *supra*, and stating, "In applying this test, defendants' actions may be justified only if they show a compelling state interest." *Hawkins* v. *Town of Shaw*, F. 2d (5th Cir. 1971) (slip opinion at 3).

In *Hawkins* the Fifth Circuit specifically considered the relevance of the defendant's "intent," or "purpose" as the majority in our case would label it. Conceding that "the record contains no direct evidence aimed at establishing bad faith, ill will or an evil motive on the part of the Town of Shaw and its public officials," *Id.* at (slip opinion at 12), the court held: "Having determined that no compeling state interests can possibly justify the discriminatory *results* of Shaw's administration of municipal services, we conclude that a violation of equal protection has ocurred." *Id.* at (slip opinion at 13) [emphasis in original text].

Just as Shaw's administration of municipal services violates the constitutional guarantee of equal protection, so too does the creation of the new Scotland Neck School

District.[8] The challenged legislation carves an enclave, 57% white and 43% black, from a previously 22% white and 77% black school system.[9] No compelling or overriding state interest justifies the new district, and its formation has a racially discriminatory effect by allowing the white residents of Scotland Neck to shift their children from a school district where they are part of a 22% minority to one where they constitute a 57% majority.

The prevailing opinion draws comfort from the fact that the new school district, because all children in the same grade will attend the same school, will be "integrated throughout." I dare say a 100% white school district would also be "integrated throughout." The relevant question is what *change* in degree of integration has been effected by the creation of the new district. Here the change is an increase in the percentage of white pupils from 22% to 57%. The Constitution will no more tolerate measures establishing a ratio of whites to blacks which the whites find *more* acceptable than it will measures totally segregating whites from blacks. The 35% shift here is no less discriminatory because it is a shift from 22% to 57% than if it were one from 65% to 100%.[10]

The majority opinion makes the puzzling concession that:

> If the effect of this act was the continuance of a dual school system in Halifax County or the estab-

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[8] Since even the majority concedes that the Littleton-Lake Gaston School District must be enjoined as a racially discriminatory scheme in violation of the Fourteenth Amendment, I do not discuss the facts of that case.

[9] One percent of the pupils in Halifax County are Indians.

[10] Judge Winter properly emphasizes in his separate opinion that the effect of the new school districts must be measured by comparing "the racial balance in the preexisting unit with that in the new unit sought to be created, and that remaining in the preexisting unit after the new unit's creation." Focusing, as do I, on the 35% increase in the white student population of the new Scotland Neck School District, he quite correctly notes that "[a] more flagrant example of the creation of a white haven, or a more nearly white haven, would be difficult to imagine."

> lishment of a dual system in Scotland Neck it would not withstand challenge under the equal protection clause, but we have concluded that it does not have that effect.

The situation here is that the Act sets up in Halifax County two school systems, one with a 50:43 white to black ratio and the other with a 19:80 white to black ratio, in place of one school system with a 22:77 white to black ratio. Thus, the Act constructs a dual school system in Halifax County by the simple expedient of labeling the two sets of schools as separate districts. The majority does not explain why the Act can *create* a dual school system in Halifax County if it could not *continue* a dual system there. Nor do they explain why the Act can *establish* a dual school system in Halifax County if it could not *establish* one in Scotland Neck. Obviously no explanation is possible and the legislation severing the Scotland Neck School District fails to meet the test of the equal protection clause.

II

Even if I accepted the majority's formulation as the proper doctrine to control these cases, which I certainly do not, I think their test is misapplied in *Scotland Neck*. The court accepts at face value the defendants' assertions that local control and increased taxation were the dominant objectives to be fulfilled by the new district, with the ultimate goal of providing quality education to the students of Scotland Neck. The facts plainly are to the contrary and demonstrate that, in projecting the new district, race was the primary consideration. The District Court specifically found that a significant factor in the creation of the new school district was

> a desire on the part of the leaders of Scotland Neck to preserve a ratio of black to white students in the schools of Scotland Neck that would be acceptable to white parents and thereby prevent the flight of white students to the increasingly popular all-white private schools in the area.

United States v. *Halifax County Board of Education*, 314 F. Supp. 65, 72 (E.D.N.C. 1970). The defendants do not contest this finding.[11]

What starkly exposes the true purpose impelling the redistricting adventure and belies the professions of lofty objectives is the transfer plan initially adopted by the Scotland Neck City Board of Education.[12] Under that plan, parents residing within Halifax County but outside the newly fashioned district could place their children in the Scotland Neck Schools by paying a fee ranging from $100 to $125. The use of transfer plans of this nature as devices to thwart the mandate of *Brown* v. *Board of Education*, *supra*, has not been uncommon,[13] and the majority here has no difficulty in recognizing that the Scotland Neck transfer plan was a contrivance to perpetuate segregation. Initial applications for transfer under the plan were received from 350 white and only 10 black children in Halifax County. The net result would have been a racial mix of 74% white, 26% black in the Scotland Neck School District, contrasting with 82% black, 17% white, 1% Indian, in the rest of Halifax County. Thus the transfer plan would have operated directly contrary to the obligation to desegregate the schools

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[11] The defendants assert instead that the prevention of white flight is a legitimate goal. However, the Supreme Court in *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 459 (1968), has directly addressed itself to this argument, and rejected it out of hand: "We are frankly told in the Brief that without the transfer option it is apprehended that white students will flee the school system altogether. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Brown II* at 300.

See also Brunson v. *Board of Trustees of School District No. 1 of Clarendon County*, 429 F. 2d 820 (4th Cir. 1970); *Anthony* v. *Marshal County Board of Education*, 409 F. 2d 1287 (5th Cir. 1969). The defendants' candid admission serves only to emphasize the dominant racial considerations behind the whole scheme.

[12] Although the School Board later abandoned the transfer plan, its initial adoption nevertheless reflects the Board's intentions.

[13] *See Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968); *Gross* v. *Board of Education*, 373 U.S. 683 (1963).

of Halifax County and distinctly evidences the design of the Scotland Neck School Board to bring into existence a white haven.

Curiously enough, despite its condemnation of the transfer plan, the court declares the plan not relevant in assessing the intent of the North Carolina legislature in enacting Chapter 31, since there is no evidence in the record to show that the legislative body knew a transfer plan would be effected. This reasoning is fallacious for legislators are not so naive and, in any event, are chargeable with the same motivations as the local communities concerned. The relevant inquiry under the majority's test is into the purposes for which state action was taken and, as Judge Winter observes in his separate opinion, when dealing with statutes designed to affect local communities, one must look to the localities to determine the purposes prompting the legislation.[14]

The size of the new school district in Scotland Neck is also a crucial factor to be taken into account in judging the genuineness of the alleged goal of quality education. The Report of the Governor's Study Commission on the Public School System of North Carolina favors the *consolidation* of school districts to increase efficiency in the operations of the public schools, and suggests 9,000-10,000 as a desirable pupil population, with 3,500 to 4,000 as a minimum. Scotland Neck's minuscule new school district for 695 pupils—one fifth of the suggested minimum—is an anomaly that runs directly counter to the recommendation of the Study Commission that schools be merged into larger administrative units. Moreover, if quality education were the true objective and Scotland Neck resdients were deeply concerned with increasing revenue to improve their schools,

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[14] Moreover, as the District Court noted, local newspapers, including the *Raleigh News and Observer*, suggested that racial considerations, and not a concern for better educational, motivated the legislation. For example, on February 14, 1969, a month before Chapter 31 was enacted, the *Raleigh News and Observer* commented editorially that the bill provided for an "educational island" dominated by whites and on February 22, 1969, suggested that if the bill passed, it would encourage other school districts to resort to similar legislation.

one might have expected that in-depth consideration would have been given to the financial and educational implications of the new district. However, the District Court found that:

> [t]here were no studies made prior to the introduction of the bill with respect to the educational advantages of the new district, and there was no actual planning as to how the supplement would be spent although some people assumed it would be spent on teachers' supplements.

United States v. *Halifax County Board of Education*, 314 F. Supp. at 74.

Also highly relevant in assessing the dominant purpose is the timing of the legislation splintering the Halifax County school system. During the 1967-68 school year the Halifax County School District maintained racially identifiable schools, and only 46 of the 875 students attending the Scotland Neck school were black. The next school year, under prodding by the Department of Justice, the Halifax County Board of Education assigned to the Scotland Neck school the entire seventh and eighth grades from an adjacent all-black county school, and promised to desegregate completely by 1969-70. A survey by the North Carolina State Department of Education in December 1968 recommended an integration plan which provided that 690 black and 325 white students should attend the Scotland Neck school. It was only then that the bill which later became Chapter 31 was introduced into the General Assembly of North Carolina in 1969. The fact that the Scotland Neck School District was not formed until the prospects for a unitary school system in Halifax County became imminent leads unmistakably to the conclusion that race was the dominant consideration and that the goal was to achieve a degree of racial apartheid more congenial to the white community.[15]

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[15] It is also noteworthy that while the Scotland Neck community claims that it had not been accorded a fair allocation of county school funds over a period of years, this apparently became intolerable only when the Department of Justice exerted pressure for immediate action to effectuate integration.

III

The court's incongruous holdings in these two cases, reversing the District Court in *Scotland Neck*, while affirming in the twin case, *Littleton-Lake Gaston*, cannot be reconciled. The uncontested statistics presented in *Scotland Neck* speak even louder in terms of race than the comparable figures for *Littleton-Lake Gaston*. The white community in Scotland Neck has sliced out a predominantly white school system from on overwhelmingly black school district. By contrast, the white community in Littleton-Lake Gaston was more restrained, gerrymandering a 46% white, 54% black, school unit from a county school system that was 27% white, 67% black.[16] The majority attempts to escape the inevitable implications of these statistics by attributing to the North Carolina legislature, which severed the Scotland Neck School District on March 3, 1969, benevolent motivation and obliviousness to the racial objectives of the local white community. Yet the majority unhesitatingly finds a discriminatory purpose in the similar excision of the new Littleton-Lake Gaston School District by the same legislators only one month later, on April 11, 1969. The earlier statute no less than the later provided a refuge for white students and maximized preservation of segregated schools. The record and the District Court's opinion in *Scotland Neck*, no less than the record and the opinion in *Littleton-Lake Gaston*, are replete with evidence of discriminatory motivations. On their facts the two cases are as alike as two peas in a pod.

Judge Bryan soundly recognizes the discordance in the two holdings of the majority. The resolution he proposes is to reverse in both cases. This would indeed cure the inconformity, but at the cost of compounding the error. The correction called for lies in the opposite direction—affirmance in both cases.

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[16] Six percent of the pupils in Warren County are Indian.

IV

If, as the majority directs, federal courts in this circuit are to speculate about the interplay and the relative influence of divers motives in the molding of separate school districts out of an existing district, they will be trapped in a quigmire of litigation. The doctrine formulated by the court is ill-conceived, and surely will impede and frustate prospects for successful desegregation. Whites in counties heavily populated by blacks will be encouraged to set up, under one guise or another, independent school districts in areas that are or can be made predominantly white.

It is simply no answer to a charge of racial discrimination to say that it is designed to achieve "quality education." Where the effect of a new school district is to create a sanctuary for white students, for which no compelling and overriding jurisdiction can be offered, the courts should perform their constitutional duty and enjoin the plan, notwithstanding professed benign objectives.

Racial peace and the good order and stability of our society may depend more than some realize on a convincing demonstration by our courts that true equality and nothing less is precisely what we mean by our proclaimed ideal of "the equal protection of the laws." The palpable evasions portrayed in this series of cases should be firmly condemned and enjoined. Such examples of racial inequities do not go unheeded by the adversely affected group. They are noted and resented. The humiliations inflicted by such cynical maneuvers feed the fires of hostility and agravate the problem of maintaining peaceful race relations in the land. In this connection it is timely to bear in mind the admonition of the elder Mr. Justice Harlan, dissenting in *Plessy* v. *Ferguson*, 163 U.S. 537, 560 (1896);

> The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law.

I dissent from the reversal in Nos. 14929 and 14930, *United States* v. *Scotland Neck City Board of Education*, —— F. 2d —— (4th Cir. 1971), and concur in the affirmance in No. 14990, *Turner* v. *Littleton-Lake Gaston School District*, —— F. 2d —— (4th Cir. 1971).

ALBERT V. BRYAN, *Circuit Judge*, dissenting: For me there is here no warrant for a decision different from the *Scotland Neck* and *Emporia* determinations. This conclusion derives from the majority's exposition of the fact parallel of these cases with the circumstances of *Littleton-Lake Gaston*. The identicalness irresistibly argues a like disposition—reversal of the judgment on appeal.

WINTER, *Circuit Judge*, dissenting and concurring specially: I dissent from the majority's opinion and conclusion in No. 14,552, *Wright* v. *Council of City of Emporia*, —— F. 2d —— (4 Cir. 1971), and in Nos. 14929 and 14930, *United States* v. *Scotland Neck City Board of Education*, —— F. 2d —— (4 Cir. 1971). I concur in the judgment in No. 14990, *Turner* v. *Littleton-Lake Gaston School District*, —— F. 2d —— (4 Cir. 1971), and I can accept much of what is said in the majority's opinion. There is, however, a broader basis of decision than that employed by the majority on which I would prefer to rest.

Because the majority makes the decision in *Emporia* the basis of decision in *Scotland Neck* and distinguishes them from *Littleton-Lake Gaston*, I will discuss the cases in that order. I would conclude that the cases are indistinguishable, as does my Brother Bryan, although I would also conclude that each was decided correctly by the district court and that in each we should enjoin the carving out of a new school district because it is simply another device to blunt and to escape the ultimate reach of *Brown* v. *Board of Education*, 347 U.S. 483 (1954), and subsequent cases.

I

While the legal problem presented by these cases is a novel one in this circuit, I think the applicable legal standard is found in the opinion of the Supreme Court in Green v. County School Board of New Kent County, 391 U.S. 430 (1968). In rejecting a "freedom of choice" plan under the circumstances presented there, the Court articulated the duties of both a school board and a district court in implementing the mandate of *Brown*:

> The burden on a school board today is to come forward with a plan that promises realistically to work, *and promises realistically to work now.*
>
> * * * *
>
> Where the courts find the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system *"at the earliest possible date,"* then the plan may be said to provide effective relief. Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; *and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method.* [emphasis added.]

391 U.S. at 439.

In each of the instant cases, following a protracted period of litigation, a plan designed finally to institute a unitary school system was jeopardized by the attempt of a portion of the existing school district to break away and establish its own schools. I think the advocates of such a subdivision bear the "heavy burden" of persuasion referred to in *Green* because, as in that case, the dominant feature of these cases is the last-minute proposal of an alternative to an existing and workable integration plan. Factually, these cases are not significantly dissimilar from *Green*. Each act of secession would necessarily require the submission and approval of new integration plans for the newly-created districts, and thus each is tantamount to the proposal of a new

plan. And while the act giving rise to the alternative approach here is state legislation rather than a proposal of the local school board, the fact remains that the moving force in the passage of each piece of legislation [1] was of local origin. Few who have had legislative experience would deny that local legislation is enacted as a result of local desire and pressure. It is, therefore, to local activities that one must look to determine legislative intent.

Application of the "heavy burden" standard of *Green* to the instant case is also supported by considerations of policy. In an area in which historically there was a dual system of schools and at best grudging compliance with *Brown*, we cannot be too careful to search out and to quash devices, artifices and techniques furthered to avoid and to postpone full compliance with *Brown*. We must be assiduous in detecting racial bias masking under the guise of quality education or any other benevolent purpose. Especially must we be alert to ferret out the establishment of a white haven, or a relatively white haven, in an area in which the transition from racially identifiable schools to a unitary system has proceeded slowly and largely unwillingly, where its purpose is at least in part to be a white haven. Once a unitary system has been established and accepted, greater latitude in redefinition of school districts may then be permitted.

Given the application of the *Green* rationale, the remaining task in each of these cases is to discern whether the proposed subdivision will have negative effects on the integration process in each area, and, if so, whether its advocates have borne the "heavy burden" of persuasion imposed by *Green*.

II

EMPORIA SCHOOL DISTRICT

The City of Emporia, located within the borders of Greensville County, Virginia, became a city of the second

[1] In *Emporia*, the implementing legislation for the separation already existed; however, the local people alone made the choice to exercise the option which the statute provided.

class on July 31, 1967, pursuant to a statutory procedure dating back to the 19th Century. While it had the state-created right at that time to establish its own school district, it chose instead to remain within the Greensville County system until June, 1969. It is significant that earlier in this same month, more than a year after it had invalidated a "freedom of choice" plan for the Greensville County system, the district court ordered into effect a "pairing" plan for the county as a further step toward full compliance with *Brown* and its progeny.

The record amply supports the conclusion that the creation of a new school district for the City of Emporia would, in terms of implementing the principles of *Brown*, be "less effective" than the existing "pairing" plan for the county system. In the first place, the delay involved in establishing new plans for the two new districts cannot be minimized in light of the Supreme Court's statement in *Green* that appropriate and effective steps must be taken at once. See also *Carter* v. *West Feliciana School Board*, 396 U.S. 290 (1970); *Alexander* v. *Holmes County Bd. of Ed.*, 396 U.S. 19 (1969). Secondly, as the district court found, the separation of Emporia from Greensville County would have a substantial impact on the racial balance both within the county and within the city. Within the entire county, there are 3,759 students in a racial ratio of 34.1% white and 65.9% black. Within the city there are 1,123 students, 48.3% of whom are white and 51.7% are black. If the city is permitted to establish its own school system, the racial ratio in the remainder of the county will change to 27.8% white and 72.2% black.[2] To me, the crucial element in this shift is not that the 48.3%-51.7% white to black ratio in the

[2] As part of the establishment of the new system, the Emporia school board proposed a transfer plan whereby Emporia will accept county students upon payment of tuition. The record does not contain any projection of the number of county students who would avail themselves of the plan although in argument counsel was candid in stating that only white parents would be financially able to exercise the option. The transfer plan was quickly abandoned when it became apparent that it might not earn the approval of the district court.

town does not constitute the town a white island in an otherwise heavily black county and that a shift of 6% in the percentage of black students remaining in the county is not unacceptably large. Whenever a school area in which racial separation has been a historical fact is subdivided, one must compare the racial balance in the preexisting unit with that in the new unit sought to be created, and that remaining in the preexisting unit after the new unit's creation. A substantial shift in any comparable balances should be cause for deep concern. In this case the white racial percentage in the new unit will increase from 27.8% to 48.3%. To allow the creation of a substantially whiter haven in the midst of a small and heavily black area is a step backward in the integration process.

And finally, the subdivision of the Greensville County school district is "less effective" in terms of the principles of *Brown* because of the adverse psychological effects on the black students in the county which will be occasioned by the secession of a large portion of the more affluent white population from the county schools. If the establishment of an Emporia school district is not enjoined, the black students in the county will watch as nearly one-half the total number of white students in the county abandon the county schools for a substantially whiter system. It should not be forgotten that psychological factors, and their resultant effects on educational achievement, were a major consideration in the Supreme Court's opinion in *Brown*.

In my mind, the arguments advanced by the residents of Emporia in support of their secession from the county school system do not sustain the "heavy burden" imposed by *Green*. The essence of their position is that, by establishing their own schools over which they will exercise the controlling influence, they will be able to improve the quality of their children's education. They point to a town commitment to such a goal and, in particular, to a plan to increase educational revenues through increased local taxation. They also indicate that they presently have very little voice in the management of the county school system. Although, as the district court

found, the existence of these motives is not to be doubted, I find them insufficent in considering the totality of the circumstances.

While the district court found that educational considerations were *a* motive for the decision to separate, it also found that "race was a factor in the city's decision to secede." Considering the timing of the decision in relation to the ordering into effect of the "pairing" plan, as well as the initial proposal of a transfer plan, this finding is unassailable. *Green* indicates that the absence of good faith is an important consideration in determining whether to accept a less effective alternative to an existing plan of integration. The lack of good faith is obvious here.

When the educational values which the residents of Emporia hope to achieve are studied, it appears that the secession will have many deleterious consequences. As found by the district court, the high school in the city will be of less than optimum size. County pupils will be cut off from exposure to a more urban society. The remaining county system will be deprived of leadership ability formerly derived from the city. It will suffer from loss of the city's financial support, and it may lose teachers who reside in the city. To me, these consequences, coupled with the existence of the racial motive, more than offset the arguments advanced by the residents of Emporia. The separation, with its negative effects on the implementation of the principles of *Brown*, should be enjoined.

III

SCOTLAND NECK SCHOOL DISTRICT

As the majority's opinion recites, the history of resistance to school desegregation in the Halifax County school system parallels the history of the attempts on the part of the residents of Scotland Neck to obtain a separate school district. The significant fact is that in spite of otherwise apparently cogent arguments to justify a separate system, the separate system goal was not realized until, as the result of pressure from the United

States Department of Justice, the Halifax County Board agreed to transfer the seventh and eighth grade black students from the previously all-black Brawley School, outside the city limits of Scotland Neck, to the Scotland Neck School, previously all-white. Chapter 31 followed thereafter as soon as the North Carolina legislature met. It is significant also that the Halifax County Board reneged on its agreement with the Department of Justice shortly before the enactment of Chapter 31.

The same negative effects on achieving integration which are present in the Emporia secession are present here. Although the City of Scotland Neck has already submitted a plan for its school district, delay will result in devising such a plan for the remaining portion of Halifax County. The racial balance figures show that the existing county system has 8,196 (77%) black students, 2,357 (22%) white students, and 102 (1%) Indian students. Within the city system, there would be 399 (57.4%) white and 296 (42.6%) black, while the remaining county system would be comprised of 7,900 (80%) black, 1,958 (19%) white and 102 (1%) Indian. The difference between the percentage of white students within the existing system and the newly-created one for Scotland Neck is thus 35%. A more flagrant example of the creation of a white haven, or a more nearly white haven, would be difficult to imagine. The psychological effects on the black students cannot be overestimated.

The arguments advanced on behalf of Scotland Neck are likewise insufficient to sustain the burden imposed by *Green*. Even if it is conceded that one purpose for the separation was the local desire to improve the educational quality of the Scotland Neck schools, the record supports the conclusion of the district court that race was a major factor. If the basic purpose of Chapter 31 could not be inferred from the correlation of events concerning integration litigation and the attempt to secede, other facts make it transparent. As part of its initial plan to establish a separate system, Scotland Neck proposed to accept transfer students from outside the corporate limits of the city on a tuition basis. Under this transfer system, the racial balance in the Scotland Neck

area was 749 (74%) white to 262 (26%) black, and the racial balance in the rest of Halifax County became 7,934 (82%) black, 1,608 (17%) white, and 102 (1%) Indian.[3] This proposal has not yet been finally abandoned. In oral argument before us, counsel would not tell us forthrightly that this would not be done, but rather, equivocally indicated that the proposal would be revived if we, or the district court, could be persuaded to approve it. I cannot so neatly compartmentalize Chapter 31 and the transfer plan as does the majority, and conclude that one has no relevance to the other. To me, what was proposed, and still may be attempted, by those who provided the motivation for the enactment of Chapter 31 is persuasive evidence of what Chapter 31 was intended to accomplish.

In terms of educational values, the separation of Scotland Neck has serious adverse effects. Because Scotland Neck, within its corporate boundaries, lacked sufficient facilities even to operate a system to accommodate the only 695 pupils to be educated, it purchased a junior high school from Halifax County. This school is located outside of the corporate boundaries of Scotland Neck. The sale deprives the students of Halifax County, outside of Scotland Neck of a school facility. The record contains abundant, persuasive evidence that the best educational policy and the nearly unanimous opinion of professional educators runs contrary to the creation of a small, separate school district for Scotland Neck. A study by the State of North Carolina indicates that a minimally acceptable district has 3,500-4,000 pupils.

On the facts I cannot find the citizens of Scotland Neck motivated by the benign purpose of providing ad-

[3] There is apparent error in the computations made by the district court in this regard. The district court found that the net effect of the transfer plan would be to add 350 white students to the city system. Added to the resident white students (399), the total is 749, not 759 as indicated in the opinion of the district court. The district court's figure of 262 black students in the city under the transfer plan (a net loss of 34) appears correct. But when these two totals are subtracted from the figures given for the existing county system in 1968-1969 (2,357 white, 8,196 black and 102 Indian), the effects on the county are as shown above.

ditional funds for their schools; patently they seek to blunt the mandate of *Brown*. Even if additional financial support for schools was a substantial motive, the short answer is that a community should not be permitted to buy its way out of *Brown*. Here again, the "heavy burden" imposed by *Green* has not been sustained.

IV

LITTLETON-LAKE GASTON SCHOOL DISTRICT

The majority's opinion correctly and adequately discloses the legislative response to court-ordered compliance with *Brown* and its progeny. That response was the creation of the Warrenton City School District and the Littleton-Lake Gaston School District. The overall effect of the creation of the Littleton-Lake Gaston district, the proposed tuition transfer plan, and the creation of the Warrenton City district (an act enjoined by the district court and not before us) would be to permit more than 4 out of 5 white students to escape the heavily black schools of Warren County. Even without the transfer plan, the racial balance in the Littleton-Lake Gaston district would show nearly 20% more white students than in the existing Warren County unit. To permit the subdivision would be to condone a devastating blow to the progress of school integration in this area.

Despite the assertion of the benign motives of remedying long-standing financial inequities and the preservation of local schools, I agree with the majority that the "primary" purpose and effect of the legislation creating the Littleton-Lake Gaston school district was to carve out a refuge for white students and to preserve to the fullest possible extent segregated schools. Aside from questions of motivation, the record shows that the new district was established to accommodate a total of only 659 students, despite state policy to the contrary and expert opinion that its small size rendered it educationally not feasible. And, as the majority indicates, there is no evidence that the residents of the Littleton area have been deprived of their proportionate voice in the opera-

tion of the schools of Warren County. In short, there is a complete absence of persuasive argument in favor of the creation of the new district.

While I agree that the injunction should stand, I disagree that injunctive relief should be granted only when racial motivation was the "primary" motive for the creation of the new district. Consistent with *Green*, we should adopt the test urged by the government in *Scotland Neck*, i.e., to view the results of the severance as if it were a part of a desegregation plan for the original system—that is, to determine whether the establishment of a new district would, in some way, have an adverse impact on the desegregation of the overall system. By this test the injunction would stand in the *Littleton-Lake Gaston* case, as well as in each of the two other cases, because in each of the three there is at least some racial motivation for the separation and some not insubstantial alteration of racial ratios, some inherent delay in achieving an immediate unitary system in all of the component parts, and an absence of compelling justification for what is sought to be accomplished.

BUTZNER, *Circuit Judge:* This appeal involves the same case in which I decided questions concerning the school board's compliance with the Fourteenth Amendment when I served on the district court.* While the details differ, the same basic issues remain—the validity of measures taken to disestablish a dual school system, to create a unitary system, and to assign pupils and faculty to achieve these ends.

> Title 28 U.S.C. § 47 provides: "No judge shall hear or determine an appeal from the decision of a case or issue tried by him."

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* See *Wright* v. *County School Bd. of Greensville County, Va.*, 252 F. Supp. 378 (E.D. Va. 1966). Two other opinions were not published.

Recently, Judge Craven carefully examined this statute and the cases and authorities which cast light on it. He concluded that he should not sit on an appeal of a case in which he had participated as a district judge when the ultimate questions were the same: "what may a school board be compelled to do to dismantle a dual system and implement a unitary one, or how much school board action is enough?" See Swann v. Charlotte-Mecklenburg Bd. of Ed., 431 F. 2d 135, (4th Cir. 1970). Following the sound precedent established by Judge Craven, I believe that I must disqualify myself from participating in this appeal.

[Caption Omitted]

STAY OF MANDATE

The motion to stay our mandate pending application for certiorari is allowed on the following conditions:

(1) That appellees (in the district court) file their petition for writ of certiorari on or before May 21, 1971, and, if possible, prior thereto, and that said appellees proceed with all posible diligence to prosecute their petition to the end that it may be considered by the Supreme Court of the United States before the end of its current term;

(2) With the consent of the United States, the district court injunction is modified so as to allow certification and levy, but not the collection, of taxes for the Scotland Neck City Board of Education.

This 21st day of April, 1971.

FOR THE COURT:

/s/ J. Braxton Craven, Jr.
United States Circuit Judge

SUPREME COURT OF THE UNITED STATES

No. 70-130

UNITED STATES, PETITIONER,

v.

SCOTLAND NECK CITY BOARD OF EDUCATION ET AL.

ORDER ALLOWING CERTIORARI. Filed October 12, 1971.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is consolidated with No. 70-187 and a total of one and one half hours is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 70-187

PATTIE BLACK COTTON ET AL., PETITIONERS,

v.

SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL.

ORDER ALLOWING CERTIORARI. Filed October 12, 1971.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is consolidated with No. 70-130 and a total of one and one half hours is allotted for oral argument.

HALIFAX COUNTY SCHOOLS

W. Henry Overman, Superintendent
Halifax, N. C. 27839

October 14, 1971

NORTH CAROLINA
HALIFAX COUNTY

W. Henry Overman, being duly sworn says that: [1]

1. He is Superintendent of Schools of the Halifax County County School Administrative Unit, Halifax, N.C.
2. And that he has on October 7, 1971 received reports from all principals of schools in the Halifax County School Administrative Unit giving the latest enrollment of pupils by races as follows:

School and Grade	White	Negro	Indian	Total
Aurelian Springs (K-8)	333	611	8	952
Bakers (1-8)	0	241	0	241
Brawley (1-9)	174	659	0	833
*Dawson (1-8)	32	405	0	437
Eastman (8-12)	1	686	70	757
Enfield (9-12)	34	433	0	467
Everetts (1-8)	264	415	0	679
**Hollister (1-7)	1	264	151	416
Inborden (1-8)	48	1035	0	1083
McIver (1-8)	0	508	0	508
Northwest at Wm. R. Davie (9-12)	249	632	0	881
Pittman (1-7)	1	421	2	424
Scotland Neck (10-12)	70	515	0	585
Thomas Shields (1-8)	37	227	0	264
Tillery Chapel (1-8)	9	214	0	223
White Oak (1-7)	2	319	23	344
	1255	7585	254	9094

* One Oriental student included in White

** One Spanish Surnamed American student included in White

[1] This affidavit is not part of the record in this case. However, petitioners have no objection to it, and therefore, it is included here for the Court's consideration.

/s/ W. Henry Overman
W. Henry Overman,
Superintendent

Sworn to and subscribed before me this 14th day of October, 1971.

/s/ Doris W. Netherland
Notary Public
My commission expires 9-9-75

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 450281 303

MAP IS TOO LARGE TO BE FILMED.